

SUBCHAPTER D—SPECIAL REGULATIONS

PART 372—OVERSEAS MILITARY PERSONNEL CHARTERS

Subpart A—General Provisions

- Sec.
372.1 Applicability.
372.2 Definitions.
372.3 Waiver.
372.4 Enforcement.
372.5 Suspension of revocation of authority.

Subpart B—Exemption

- 372.10 Exemption.

Subpart C—Conditions and Limitations

- 372.20 Requirement of operating authorization.
372.21 Solicitation.
372.22 Discrimination.
372.23 Methods of competition.
372.24 Surety bond, depository agreement, escrow agreement.
372.25 Tariffs to be filed for charter trips.
372.26 [Reserved]
372.27 Name of operator.
372.28 Record retention.

Subpart D—Operating Authorization

- 372.30 Application.
372.31 Issuance.
372.32 Effective period.
372.33 Nontransferability.

APPENDIX A TO PART 372—OVERSEAS MILITARY PERSONNEL CHARTER OPERATOR'S SURETY BOND UNDER PART 372 OF THE SPECIAL REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION (14 CFR PART 372)

AUTHORITY: 49 U.S.C. Chapters 401, 411, 413, 417.

SOURCE: SPR-54, 37 FR 11163, June 3, 1972, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 372 appear at 57 FR 40105, Sept. 2, 1992.

Subpart A—General Provisions

§ 372.1 Applicability.

This part establishes the terms and conditions governing the furnishing of overseas military personnel charters in air transportation by direct air carriers or foreign air carriers and by overseas military charter operators. This part also relieves charter operators from the provisions of section

41102 of Title 49 of the United States Code ("the Statute"), for the purpose of enabling them to provide overseas military personnel charters utilizing aircraft chartered from such direct air carriers or foreign air carriers. Nothing contained in this part shall be construed as repealing or amending any provisions of any of the Department's regulations, unless the context so requires.

[SPR-60, 37 FR 19122, Sept. 19, 1972, as amended at 60 FR 43529, Aug. 22, 1995]

§ 372.2 Definitions.

As used in this part, unless the context otherwise requires:

Charter means overseas military personnel charter.

Charter operator means overseas military personnel charter operator.

Charter participant means a member of the overseas military personnel charter group.

Charter price means the total amount of money paid by the charter participant to the charter operator for air transportation.

Immediate family means only the following persons: the spouse, children, parents, parents of the spouse, children of the parents, and children of the parents of the spouse of (1) military personnel on active duty with the United States Armed Forces (including Coast Guard) stationed outside the contiguous states of the United States and the District of Columbia, and (2) civilian employees of the Department of Defense who are citizens of the United States and are stationed in a foreign country, or in a U.S. territory or possession, where U.S. military personnel are stationed.

Overseas military personnel charter means a charter, either one-way or round-trip, limited to military personnel on active duty with the U.S. Armed Forces (including the Coast Guard), stationed outside the 48 contiguous States of the United States and the District of Columbia, and/or civilian employees of the Department of Defense who are citizens of the United States and are stationed in a foreign

country, or in a U.S. territory or possession, where such U.S. military personnel are stationed, and/or the immediate families of the foregoing persons, where the following conditions are met: (a) All military personnel and civilian employees of the Department of Defense participating in the charter are on official furlough, leave, pass, or other authorized absence from duty, and (b) the transportation is between a place in the 48 contiguous States of the United States or the District of Columbia and a place in Alaska, Hawaii, or a territory or possession of the United States, or a foreign country in which military personnel of the United States are stationed: *Provided, however*, That nothing contained herein shall preclude an overseas military personnel charter operator from utilizing any unused space on an aircraft chartered by it pursuant to this part for the transportation, on a free or reduced-rate basis, of such charter operator's employees, directors, and officers, and the parents and immediate families of such persons, subject to the provisions of part 223 of this chapter.

Overseas military personnel charter operator means any citizen of the United States, as defined in section 40102(a)(15) of the Statute authorized hereunder to engage in the formation of overseas military personnel charter groups and who complies with the provisions of this part.

Person means any individual, firm, association, partnership, or corporation.

Statute when used in this chapter means Subtitle VII of Title 49 of the United States Code (Transportation).

[SPR-54, 37 FR 11163, June 3, 1972, as amended by SPR-69, 38 FR 14164, May 30, 1973; SPR-109, 41 FR 35158, Aug. 20, 1976; 60 FR 43529, Aug. 22, 1995]

§ 372.3 Waiver.

A waiver of any of the provisions of this regulation may be granted by the Department upon its own initiative, or upon the submission by a charter operator of a written request therefor: *Provided*, That such a waiver is in the public interest and it appears to the Department that special or unusual circumstances warrant a departure from the provisions set forth herein.

§ 372.4 Enforcement.

In case of any violation of the provisions of the Statute, or this part, or any other rule, regulation, or order issued under the Statute, the violator may be subject to a proceeding pursuant to section 46101 of the Statute before the Department, or sections 46106 through 46108 of the Statute before a U.S. district court, as the case may be, to compel compliance therewith, to civil penalties pursuant to the provisions of section 46301 of the Statute, or in the case of willful violation, to criminal penalties pursuant to the provisions of section 46316 of the Statute; or other lawful sanctions.

[SPR-54, 37 FR 11163, June 3, 1972, as amended at 60 FR 43529, Aug. 22, 1995]

§ 372.5 Suspension or revocation of authority.

The Department reserves the power to suspend the authority of any charter operator, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public, or to revoke such authority for cause.

Subpart B—Exemption

§ 372.10 Exemption.

Charter operators are hereby relieved from the provisions of section 41102 of the Statute only if and so long as they comply with the provisions of this part and the conditions imposed herein, and to the extent necessary to permit them to organize and arrange overseas military personnel charters.

[SPR-176, 46 FR 43960, Sept. 2, 1981, as amended at 60 FR 43529, Aug. 22, 1995]

Subpart C—Conditions and Limitations

§ 372.20 Requirement of operating authorization.

No person shall engage in air transportation as an overseas military personnel charter operator by organizing, providing, selling, or offering to sell, soliciting, or advertising an overseas military personnel charter or charters unless there is in force an operating authorization issued pursuant to

§ 372.21

§ 372.31 authorizing such person to engage in such transportation.

[Docket No. 47939, 57 FR 40105, Sept. 2, 1992]

§ 372.21 Solicitation.

Solicitation of charter participants through advertising by charter operators shall be restricted to the following:

(a) Radio and television stations operated by the U.S. Armed Forces;

(b) Newspapers, periodicals, or other printed media disseminated and distributed primarily among military personnel or civilian employees of the Department of Defense: *Provided, however,* That any printed advertisement of a charter operator shall include a statement explaining that eligibility for participation in such charters is limited to military servicemen who are stationed outside of the 48 contiguous States and the District of Columbia, and/or U.S. citizen civilian DOD employees who are stationed in a foreign country, or a U.S. territory or possession, where U.S. military personnel are stationed, and their respective immediate families.

§ 372.22 Discrimination.

No charter operator shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

§ 372.23 Methods of competition.

No charter operator shall engage in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof.

§ 372.24 Surety bond, depository agreement, escrow agreement.

(a) Before selling or offering to sell, soliciting or advertising any charter flight, a charter operator shall comply with one of the three following requirements:

14 CFR Ch. II (1-1-01 Edition)

(1) The charter operator shall furnish a surety bond in an amount not less than the maximum fare held out for charter flights proposed to be operated during each calendar month multiplied by 90 percent of the number of available seats on such flights: *Provided, however,* That the liability of the surety to any charter participant shall not exceed the charter operator's applicable tariff fare. Such bond shall be filed with the Department not less than 45 days prior to the commencement of the calendar month covered by the bond together with a list of flights proposed to be operated during the month showing charter price, departure dates, equipment to be used for each flight and the seating capacity: *Provided, however,* That the amount of the bond shall be increased if additional charter flights are proposed or may be reduced if proposed charter flights are canceled, in which event a substitute bond and amended list of proposed flights shall be filed with the Department within 10 days of the date that the charter operator adds flights or cancels flights previously proposed, but in no event later than 2 days prior to the operation of any such additional charter flights; or

(2) The charter operator shall:

(i) Furnish and file with the Department a surety bond in the amount of \$100,000 for the protection of the charter participants: *Provided, however,* That the liability of the surety to any charter participant shall not exceed the charter operator's applicable tariff fare; and

(ii) Enter into an agreement with a bank, the terms of which shall include the following:

(a) Each participant shall pay for his deposit and subsequent payments comprising the charter participant's tariff fare only by check or money order payable to such bank which shall maintain a separate accounting for each flight: *Provided, however,* That if the participant makes a cash deposit, the charter operator who receives such cash deposit shall forthwith remit to the designated bank a check for the full amount of the deposit;

(b) The bank shall not pay the air carrier or foreign air carrier the charter price for the transportation earlier

than 60 days (including day of departure) prior to the scheduled day of departure of the originating or returning flight, upon certification of the departure date and price by the charter operator;

(c) The bank shall reimburse the charter operator for refunds made by the latter to the participants upon written notification from the charter operator;

(d) If the charter operator notifies the bank that a flight has been canceled, the bank shall make the applicable refunds directly to the participants;

(e) Except as provided in paragraph (a)(2)(ii)(c) of this section, the bank shall not pay any funds from the account to the charter operator prior to 2 banking days after completion of each flight when the balance in the account shall be paid to the charter operator upon certification of the completion date by the charter operator and direct air carrier;

(f) Notwithstanding any provisions above, the amount of total cash deposits required to be maintained in the depository account of the bank may be reduced by one or both of the following: The amount of surety bond in the form prescribed herein in excess of the minimum bond required by paragraph (a)(2)(i) of this section; an escrow with the designated bank of Federal, State, or municipal bonds or other securities, consisting of certificates of deposit issued by banks having a stated policy of redeeming such certificates before maturity at the request of the holder (subject only to such interest penalties or other conditions as may be required by law), or negotiable securities which are publicly traded on a securities exchange, all such securities to be made payable to the escrow account: *Provided*, That such other securities shall be substituted in an amount no greater than 80 percent of the total market value of the escrow account at the time of such substitution: *And provided, further*, That should the market value of such other securities subsequently decrease, from time to time, then additional cash or securities qualified for investment hereunder shall promptly be added to the escrow account, in an amount equal to the amount of such decreased value; or

(3) The charter operator shall:

(i) Furnish and file with the Department a surety bond in the amount of \$100,000 for the protection of the charter participants: *Provided, however*, That the liability of the surety to any charter participant shall not exceed the charter operator's applicable tariff fare; and

(ii) Enter into an agreement with a bank, the terms of which shall include the following:

(a) Whenever the gross amount of customers' deposits exceeds 25 percent of the charter operator's net worth, as computed under generally accepted accounting principles, the charter operator shall, on or before the 30th day of the succeeding month, place in escrow or in trust with the bank cash in an amount at least equal to the amount by which such deposits exceed 25 percent of its net worth: *Provided*, That negotiable securities may be substituted for cash, but the market value thereof shall at all times be not less than the amount of cash for which they are substituted;

(b) The escrow agreement or the trust agreement between the bank and the operator shall not be effective until approved by the Department. Claims against the escrow or trust may be made only with respect to the non-performance of air transportation.

(b) As used in this section, the term *bank* means a bank insured by the Federal Deposit Insurance Corporation.

(c) Any bond furnished under this section shall insure the financial responsibility of the charter operator and the supplying of the air transportation in accordance with the contract between the charter operator and the charter participants, and shall be in the form set forth as appendix A to this part. Such bond shall be issued by a bonding or surety company (1) whose surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6; or (2) which is listed in Best's Insurance Reports (fire and casualty) with a general policyholders' rating of "A" or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which the charter originates or in which the charter operator is incorporated. For purposes of this

§ 372.25

section, the term "State" includes any territory or possession of the United States, or the District of Columbia. The bond shall be specifically identified by the issuing surety with a company bond numbering system so that the Department may identify the bond with the specific charter or charters to which it relates: *Provided, however,* That these data may be set forth in an addendum attached to the bond which addendum must be signed by the charter operator and the surety company. It shall be effective on or before the date the operating authorization becomes effective. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Department will notify the direct air carrier and the charter operator, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set forth in such notification, the subject charters shall in no event be operated.

(d) Any bond furnished under this section shall provide that unless the charter participant files a claim with the charter operator, or, if he is unavailable, with the surety, within sixty (60) days after termination of the charter, the surety shall be released from all liability under the bond to such charter participant. The contract between the charter operator and the charter participants shall contain notice of this provision.

(Secs. 101(3), 204(a), 401, and 402 of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, 743, 754, and 757, as amended, 49 U.S.C. 1301, 1324, 1371 and 1372)

[SPR-54, 37 FR 11163, June 3, 1972, as amended by SPR-60, 37 FR 19122, Sept. 19, 1972; SPR-63, 37 FR 22849, Oct. 26, 1972; SPR-95, 40 FR 52355, Nov. 10, 1975; Docket No. 47939, 57 FR 40105, Sept. 2, 1992]

§ 372.25 Tariffs to be filed for charter trips.

Effective October 1, 1972, a charter operator shall not operate or sell or offer to sell, solicit or advertise, any charter trips unless such operator shall have on file with the Department a currently effective tariff showing all rates, fares, and charges for such charter trips and showing the rules, regula-

14 CFR Ch. II (1-1-01 Edition)

tions, practices, and services in connection with such transportation.

§ 372.26 [Reserved]

§ 372.27 Name of operator.

It shall be an express condition upon the exercise of the exemption herein granted and the operating authorizations issued hereunder, that the charter operator concerned, in holding out to the public and performing air transportation services, shall do so only in a name the use of which is authorized under the provisions of part 215 of this chapter.

§ 372.28 Record retention.¹

(a) Every charter operator conducting a charter pursuant to this part shall retain for 2 years after completion of the charter or series of charters true copies of the following documents at its principal or general office in the United States:

(1) All documents which evidence or reflect deposits made by, and refunds made to, each charter participant;

(2) All statements, invoices, bills, and receipts from suppliers or furnishers of goods and services in connection with the charter or series of charters.

(b) Every charter operator shall make the documents listed in this section available upon request by an authorized representative of the Department and shall permit such representative to make such notes and copies thereof as he deems appropriate.

[SPR-54, 37 FR 11163, June 3, 1972, as amended by Docket No. 47939, 57 FR 40105, Sept. 2, 1992]

¹Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device, a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing of document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than \$10,000 or imprisoned not more than 5 years, or both. Title 18, U.S.C. sec. 1001.

Subpart D—Operating Authorization

§ 372.30 Application.

(a) *Application.* Any person desiring to operate as an overseas military personnel charter operator may apply to the Department for an appropriate operating authorization. Contact the Office of Aviation Analysis, Special Authorities Division, for filing instructions. The application shall be certified by a responsible official of such person and shall contain the following information:

- (1) Date;
- (2) Name of applicant, trade names, and name in which authorization is to be issued;
- (3) Address of principal office and mailing address;
- (4) Form of organization (i.e., corporation, partnership, etc.), State under whose laws company is authorized to operate and date company was formed;
- (5) A list containing the names of each officer, director, partner, owner, or member of applicant, and holder of more than 5 percent of outstanding stock if a corporation, or owner of more than a 5-percent interest if other than a corporation; an indication as to whether or not 75 percent or more of the voting interest is owned or controlled by citizens of the United States or one of its possessions; if more than 5 percent of applicant's stock is held by a corporation, an indication must be made as to whether or not 75 percent or more of the voting interest in such corporation is owned or controlled by citizens of the United States or one of its possessions;
- (6) A description of current business activities and of former business experience in, or related to, the transportation field;
- (7) Description of operating authority granted applicant by agencies of the U.S. Government (such as customs broker, surface or air freight forwarder, motor carrier, ocean freight forwarder, etc.), and, if applicable, reasons for revocation or other termination;
- (8) List of names of the officers, owners, etc., of applicants who have at any time applied for any type of authority

or registration from the Civil Aeronautics Board or the Department of Transportation and, if applicable, reasons for revocation or other termination;

(9) List of officers, owners, etc., of applicant who have at any time been employed by or associated with any air carrier authorized to operate by the Civil Aeronautics Board or the Department of Transportation indicating dates of employment and capacity in which employed;

(10) Any additional information in support of application;

(11) Balance sheet as of a date not more than 3 months prior to application and profit and loss statement for the full year ending as of date of balance sheet;

(12) Brief account of any arrangement by which applicant will have available financial sources and facilities of other companies or individuals;

(13) The charter operator's surety bond and, where applicable, a copy of the depository, escrow or trust agreement with a bank as provided in § 372.24.²

(b) *Additional information.* The applicant shall also submit such other additional information pertinent to its proposed activities as may be requested by the Department with respect to any individual application.

[SPR-54, 37 FR 11163, June 3, 1972, as amended by Docket No. 47939, 57 FR 40105, Sept. 2, 1992; 60 FR 43529, Aug. 22, 1995]

§ 372.31 Issuance.

(a) If, after the filing of an application for an operating authorization, it appears that the applicant is capable of performing the air transportation authorized by this part as an overseas military personnel charter operator and of conforming to the provisions of the Act and all rules and requirements thereunder, and that the conduct of such operations by the applicant will not be inconsistent with the public interest, the applicant will be notified by letter. Such notification will advise

²The surety bond and, where applicable, a copy of the depository escrow, or trust agreement with the bank should not be filed with the Department until the applicant is notified by the Department to do so.

§ 372.32

14 CFR Ch. II (1–1–01 Edition)

the applicant that, upon the filing of a valid tariff pursuant to § 372.25, an operating authorization will be issued to the applicant.

(b) If, after the filing of an application for an operating authorization, it appears that the applicant has not made a due showing of capability or that the conduct of operations by the applicant might otherwise be inconsistent with the public interest, the Department shall by letter notify the applicant of its findings to that effect. The Department may dismiss any such application unless within 30 days of the date of the mailing of such letter, the applicant has in writing requested reconsideration and submitted such additional information as it believes will make the necessary showing, or requested that the application be assigned for hearing, in which case the applicant shall outline the evidence to be presented at such hearing and shall show the need for hearing in order properly to present its case.

(c) In the event that reconsideration or hearing is requested, the Department may, without notice or hearing, enter an order of approval or of disapproval in accordance without notice or hearing, enter an order of approval or of disapproval in accordance with its determination of the public interest upon the showing made, or on its own initiative may assign the application for hearing.

§ 372.32 Effective period.

Each operating authorization shall be effective upon the date specified therein, and shall continue in effect, unless sooner suspended or revoked, during such period as the authority provided by this part shall remain in effect, or if issued for a limited period of time, shall continue in effect until the expiration thereof unless sooner suspended or revoked.

§ 372.33 Nontransferability.

(a) An operating authorization shall be nontransferable and shall be effective only with respect to the person named therein or his successor by operation of law, subject to the provisions of this section. The following persons may temporarily continue operations under an operating authorization

issued in the name of another person, for a maximum period of 6 months from the effective date of succession, by giving written notice of such succession to the Department within 60 days after the succession:

(1) Administrators or executors of deceased persons;

(2) Guardians of incapacitated persons;

(3) Surviving partner or partners collectively of dissolved partnerships; and

(4) Trustees, receivers, conservators, assignees, or other such persons who are authorized by law to collect and preserve the property of financially disabled persons.

(b) All operations by successors, as above authorized, shall be performed in the name or names of the prior holder of the operating authorization and the name of the successor, whose capacity shall also be designated. Any successor desiring to continue operations after the expiration of the 6-month period above authorized must file an application for a new operating authorization within 120 days after such succession. If a timely application is filed, such successor may continue operations until final disposition of the application by the Department.

APPENDIX A TO PART 372—OVERSEAS MILITARY PERSONNEL CHARTER OPERATOR'S SURETY BOND UNDER PART 372 OF THE SPECIAL REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION (14 CFR PART 372)

Know all men by these presents, that we _____ (name of charter operator) of _____ (address) as Principal herein-after called "Principal"), and _____ (name of surety) a corporation created and existing under the laws of the State of _____ (State) as Surety (herein-after called "Surety") are held and firmly bound unto the United States of America in the sum of _____ (see § 372.24(a), 14 CFR Part 372) for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally firmly by these presents.

Whereas Principal is an overseas military personnel charter operator pursuant to the provisions of Part 372 of the Department's

Special Regulations and other rules and regulations of the Department relating to security for the protection of charter participants, and has elected to file with the Department of Transportation such a bond as will insure financial responsibility with respect to all monies received from charter participants for services in connection with overseas military personnel charters to be operated subject to Part 372 of the Department's Special Regulations in accordance with contracts, agreements, or arrangements therefor, and

Whereas this bond is written to assure compliance by Principal as an authorized charter operator with Part 372 of the Department's Special Regulations, and other rules and regulations of the Department relating to security for the protection of charter participants, and shall inure to the benefit of any and all charter participants to whom Principal may be held legally liable for any damages herein described.

Now, therefore, the condition of this obligation is such that if Principal shall pay or cause to be paid to charter participants any sum or sums for which Principal may be held legally liable by reason of Principal's failure faithfully to perform, fulfill and carry out all contracts, agreements, and arrangements made by Principal while this bond is in effect with respect to the receipt of moneys from charter participants, and proper disbursement thereof pursuant to and in accordance with the provisions of Part 372 of the Department's Special Regulations, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of Surety with respect to any charter participant shall not exceed the charter price paid by or on behalf of such participant.

The liability of Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty (face amount) of the bond, but in no event shall Surety's obligation hereunder exceed the amount of said penalty.

Surety agrees to furnish written notice to the Office of Aviation Analysis, Department of Transportation, forthwith of all suits or claims made and judgments rendered, and payments made by Surety under this bond.

This bond shall cover the following Charters:¹

Surety company's bond No. _____

Date of flight departure _____

Place of flight departure _____

This bond is effective on the _____ day of _____, 199_, 12:01 a.m., standard time at

the address of Principal as stated herein and as hereinafter provided. Principal or Surety may at any time terminate this bond by written notice to: Special Authorities Division (X-57), Office of Aviation Analysis, U.S. Department of Transportation, Washington, DC 20590, such termination to become effective thirty (30) days after the actual receipt of said notice by the Department. Surety shall not be liable hereunder for the payment of any damages hereinbefore described which arise as a result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation and other services made by Principal after the termination of this bond as herein provided, but such termination shall not affect the liability of the bond hereunder for the payment of any damages arising as a result of contracts, agreements, or arrangements for the supplying of transportation and other services made by Principal prior to the date that such termination becomes effective. Liability of Surety under this bond shall in all events be limited only to a charter participant or charter participants who shall within sixty (60) days after the termination of the particular charter described herein give written notice of claim to the charter operator or, if it is unavailable, to Surety, and all liability on this bond shall automatically terminate sixty (60) days after the termination date of each particular charter covered by this bond except for claims made in the time provided herein.

In witness whereof, the said Principal and Surety have executed this instrument on the _____ day of _____, 199_.

PRINCIPAL

Name _____

By: Signature and title _____

Witness _____

SURETY

Name _____

By: Signature and title _____

Witness _____

Only corporations may qualify to act as surety and they must meet the requirements set forth in §372.24(c) of Part 372.

[Docket No. 47939, 57 FR 40105, Sept. 2, 1992, as amended at 60 FR 43529, Aug. 22, 1995]

PART 374—IMPLEMENTATION OF THE CONSUMER CREDIT PROTECTION ACT WITH RESPECT TO AIR CARRIERS AND FOREIGN AIR CARRIERS

Sec.

374.1 Purpose.

374.2 Applicability.

¹These data may be supplied in an addendum attached to the bond; however, all pages are to bear the Surety's seal.

§ 374.1

374.3 Compliance with the Consumer Credit Protection Act and regulations.

374.4 Enforcement procedure.

AUTHORITY: 15 U.S.C. 1601-1693r; 49 U.S.C. Subtitle VII; and 12 CFR parts 202 and 226.

SOURCE: SPR-175, 46 FR 43960, Sept. 2, 1981, unless otherwise noted.

§ 374.1 Purpose.

The purpose of this part is to state the Department of Transportation's responsibility to enforce air carrier and foreign air carrier compliance with Subchapters I, III, IV, V and VI of the Consumer Credit Protection Act and Regulations B and Z of the Board of Governors of the Federal Reserve System.

[62 FR 25841, May 12, 1997]

§ 374.2 Applicability.

This part is applicable to all air carriers and foreign air carriers engaging in consumer credit transactions.

§ 374.3 Compliance with the Consumer Credit Protection Act and regulations.

(a) Each air carrier and foreign air carrier shall comply with the requirements of the Consumer Credit Protection Act, 15 U.S.C. 1601-1693r. Any violation of the following requirements of that Act will be a violation of 49 U.S.C. Subtitle VII, enforceable by the Department of Transportation:

(1) The Truth in Lending Act, as supplemented by the Fair Credit Billing Act, 15 U.S.C. 1601-1667, requiring disclosure of credit terms to the consumer and prohibiting inaccurate or unfair credit billing and credit card practices.

(2) The Fair Credit Reporting Act, 15 U.S.C. 1681-1681i setting forth requirements to be met by consumer credit reporting agencies and persons who use consumer credit reports.

(b) Each air carrier and foreign air carrier shall comply with the requirements of Regulation B, 12 CFR part 202, and Regulation Z, 12 CFR part 226, of the Board of Governors of the Federal Reserve Board. Any violation of the requirements of those regulations will be a violation of 49 U.S.C. Subtitle VII, enforceable by the Department of Transportation.

[62 FR 25841, May 12, 1997]

14 CFR Ch. II (1-1-01 Edition)

§ 374.4 Enforcement procedure.

The statutes and regulations referred to in § 374.3 may be enforced by an enforcement procedure as set forth in part 302 of this chapter or by the assessment of civil penalties under 49 U.S.C. 46301.

[62 FR 25842, May 12, 1997]

PART 374a—EXTENSION OF CREDIT BY AIRLINES TO FEDERAL POLITICAL CANDIDATES

Sec.

374a.1 Purpose.

374a.2 Applicability.

374a.3 Definitions.

374a.4 Conditions governing extension of unsecured credit.

374a.5 Exemption authority.

374a.6 Reporting requirements.

374a.7 Record retention requirements.

374a.8 Prospective application of part.

AUTHORITY: 49 U.S.C. chapters 401, 411, 415, 417.

SOURCE: SPR-53, 37 FR 9388, May 10, 1972, unless otherwise noted.

§ 374a.1 Purpose.

Section 401 of the Federal Election Campaign Act of 1971 (Pub. L. 92-225, 86 Stat. 19, 2 U.S.C. 451, enacted February 7, 1972, and hereafter referred to as the "Election Campaign Act") directs the Civil Aeronautics Board to promulgate, within 90 days after enactment, regulations with respect to the extension of unsecured credit by any person regulated by the Board to any candidate for Federal office, or to any person on behalf of such a candidate, for goods furnished or services rendered in connection with the campaign of such candidate for nomination for election, or election, to such office. The purpose of this part is to issue rules pursuant to said section 401 of the Election Campaign Act in accordance with the Civil Aeronautics Board's responsibility thereunder.

§ 374a.2 Applicability.

This regulation shall be applicable to all air carriers as defined herein.

§ 374a.3 Definitions.

Adequate security means (a) a bond, issued by a surety meeting the standards prescribed for sureties in part 380 of this chapter, in an amount not less than one hundred and fifty percent (150%) of the credit limit established by the air carrier for the candidate, or the person acting on behalf of the candidate, as the case may be, by the terms of which bond the surety undertakes to pay to the air carrier any and all amounts (not exceeding the face amount of the bond) for which the assured candidate or the assured person acting on behalf of a candidate, as the case may be, is or may become legally liable to the air carrier for transportation, as defined in this part; or (b) collateral with a market value equal to one hundred and fifty percent (150%) of the established credit limit for such account, which collateral must be deposited in escrow and must consist of Federal, State, or municipal bonds or other negotiable securities which are publicly traded on a securities exchange.

Air carrier means any air carrier holding a certificate of public convenience and necessity issued under section 401 of the Federal Aviation Act of 1958, as amended.

Candidate means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected. For purposes of this part, an individual shall be deemed to seek nomination for election, or election, if he has (a) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, to Federal office; or (b) received contributions or made expenditures, or given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office.

Election shall have reference to (a) a general, special, primary, or runoff election; (b) a convention or caucus of a political party held to nominate a candidate; (c) a primary election held for the selection of delegates to a national nominating convention of a political party; or (d) a primary election held for the expression of a preference

for the nomination of persons for election to Federal office.

Established credit limit means the dollar limit of credit established by the carrier extending credit.

Federal office means the office of President or Vice President of the United States, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

Person acting on behalf of a candidate means (a) a political committee acting on behalf of, or a person employed by such candidate or by such political committee to act on behalf of, such candidate in connection with such candidate's campaign for nomination for election, or election, to Federal office; (b) a person acting under a contract with, or as an agent of, such candidate or political committee to engage in activities in connection with such candidate's campaign for nomination for election, or election, to Federal office; or (c) a person for whom such candidate or political committee pays, directly or indirectly, for services purchased by such person. The term includes persons acting on behalf of more than one candidate.

Payment in advance means payment by cash, check, money order, or by credit card (if the issuer of such card is not an air carrier or a subsidiary, parent, or affiliate thereof) prior to performance of such transportation by an air carrier.

Political committee means any committee, association, corporation, or organization which accepts contributions, or makes expenditures, for the purpose of supporting a candidate or candidates for nomination for election, or election, to Federal office.

Transportation means (a) the carriage of persons or property (including services connected therewith) for compensation or hire to or from any place in the United States, or (b) the lease or rental of aircraft, with or without crew.

[SPR-53, 37 FR 9388, May 10, 1972, as amended by SPR-173, 45 FR 80099, Dec. 3, 1980]

§ 374a.4 Conditions governing extension of unsecured credit.

(a) Unless adequate security is posted, or full payment in advance is made,

§ 374a.5

no air carrier shall provide transportation to any person it knows, or has reasons to know, is a candidate or a person acting on behalf of such candidate, in connection with the campaign of such candidate, except in accordance with, and subject to, the following conditions:

(1) At least once a month the air carrier shall submit to each such candidate or person a statement covering all unsecured credit extended to such candidate or person, as the case may be (whether in connection with the campaign of such candidate or otherwise.)

(2) Such statements shall be mailed no later than the second business day following the last day of the billing period, covered by the statement.

(3) The amount of indebtedness shown on each such statement shall be payable in full no later than 25 days after the last day of the billing period, after which time the indebtedness shall be overdue.

(4)(i) Unsecured credit shall not be extended by an air carrier to a candidate, or to any person acting on his behalf in connection with the campaign of such candidate, so long as any overdue indebtedness of such candidate to such air carrier shall remain unpaid, in whole or in part, or so long as such air carrier shall know that any overdue indebtedness of such candidate to any other air carrier remains unpaid, in whole or in part.

(ii) Unsecured credit shall not be extended by an air carrier to a person acting on behalf of a candidate, for transportation in connection with the campaign of such candidate, so long as any overdue indebtedness of such person to such carrier shall remain unpaid, in whole or in part, or so long as such air carrier shall know that any overdue indebtedness of such person to any other air carrier remains unpaid, in whole or in part.

(5)(i) With respect to transportation in connection with the campaign of any candidate to be performed after June 1, 1972, unsecured credit shall not be extended by an air carrier to any person acting on behalf of such candidate unless the carrier is authorized in writing by such candidate to extend such credit. The foregoing sentence shall not be construed as requiring the

14 CFR Ch. II (1-1-01 Edition)

candidate to assume liability to the carrier for credit so extended.

(ii) Within 7 days after indebtedness becomes overdue for any unsecured credit extended by an air carrier to a person acting on behalf of a candidate in accordance with paragraph (a)(5)(i) of this section, the carrier shall notify the candidate in writing of the amount of the overdue indebtedness, and, unless paid in full within 25 days after the date of such notice, the overdue indebtedness shall be deemed to be the overdue indebtedness of the candidate, for the purposes of paragraph (b)(4)(i) of this section.

(b) It shall be presumed that a candidate or person acting on behalf of a candidate intends to use transportation in connection with the campaign of such candidate for nomination for election, or election, to Federal office.

(Secs. 204, 407 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766; 49 U.S.C. 1324, 1377. Sec. 401 of the Federal Election Campaign Act of 1971, 86 Stat. 19, 2 U.S.C. 451)

[SPR-53, 37 FR 9388, May 10, 1972, as amended by SPR-169, 45 FR 25796, Apr. 16, 1980; SPR-172, 45 FR 53454, Aug. 12, 1980]

§ 374a.5 Exemption authority.

Air carriers are exempt from the following provisions of Title IV of the Federal Aviation Act of 1958, as amended: (a) Section 403, (b) section 404(b), and any and all other provisions of Title IV of the Federal Aviation Act of 1958, as amended, to the extent necessary to enable air carriers to comply with the provisions of this part.

§ 374a.6 Reporting requirements.

(a) Air carriers shall make monthly reports to the Bureau of Transportation Statistics with respect to the credit for transportation furnished to candidates, or persons acting on behalf of candidates, during the period from 6 months before nomination, if any, or from 6 months before election, until the date of election. After that 6-month period, air carriers shall file such a report with the Bureau of Transportation Statistics not later than the 20th day following the end of the calendar month in which the election or nomination takes place, and thereafter

Office of the Secretary, DOT

§ 374a.8

when any change occurs in that report, until a negative report is filed showing that no debt for such extension of credit is owed to the carrier.

(b)(1) A separate report shall be filed for each candidate with an aggregate indebtedness balance of over \$5,000 on the last day of the month to which the report pertains. The report shall cover all debts incurred by the candidate, whether or not incurred in connection with his campaign, and all debts incurred by persons acting on his behalf in connection with such campaign. The indebtedness accounts reported shall be those which the air carrier knows, or has reason to know, have been incurred by or on behalf of a candidate; and it shall be presumed that the transportation for which the indebtedness has been incurred is intended to be used in connection with the campaign of such candidate for nomination for election, or election, to Federal office.

(2) The reports required by this paragraph (b) shall be filed with the Office of Airline Information not later than the 20th day following the end of the calendar month to which the report pertains. They shall include the following data: (i) Name of account; (ii) the credit limit established for such account; (iii) the balance, if any, of the amount payable for transportation not paid for in advance; (iv) any unpaid balance of the charges for such transportation as of the last day of the month covered by the report, and the length of time that such balance has remained unpaid; and (v) a description of the type and value of any bond, collateral, or other security securing such unpaid balance.

(3) The report required by this paragraph (b) shall be in the form attached hereto as Appendix A.¹

(c) A separate report shall be filed for each person acting on behalf of any candidate, if the aggregate indebtedness balance of such person to the reporting air carrier (including all debts incurred by such person, whether or not incurred in connection with the campaign of a candidate, as defined in this part) is over \$5,000 on the last day of the month to which the report pertains. The report shall be filed with the

Office of Airline Information not later than the 20th day following the end of the calendar month to which the report pertains and shall include (1) the credit limitation established for such person; (2) the balance, if any, of the amount payable for transportation not paid for in advance; (3) any unpaid balance of the charges for such transportation as of the last day of the month covered by the report, and the length of time that such balance has remained unpaid; and (4) a description of the type and value of any bond, collateral, or other security securing such unpaid balance.

[SPR-53, 37 FR 9388, May 10, 1972, as amended by SPR-190, 47 FR 32414, July 27, 1982; 60 FR 66726, Dec. 26, 1995]

§ 374a.7 Record retention requirements.

(a) Every air carrier subject to the part shall retain for 2 years after a Federal election true copies of the following documents at its principal or general office in the United States:

(1) All documents which evidence or reflect the furnishing of transportation to a candidate for political office or a person acting on his behalf;

(2) All statements, invoices, bills, and receipts with respect to the furnishing of such transportation referred to in paragraph (a)(1) of this section.

(b) Every air carrier shall make the documents listed in this section available in the United States upon request by an authorized representative of the DOT and shall permit such representative to make such notes and copies thereof as he deems appropriate.

[SPR-53, 37 FR 9388, May 10, 1972, as amended at 60 FR 66726, Dec. 26, 1995]

§ 374a.8 Prospective application of part.

The provisions of this part shall apply only to the extension of credit by an air carrier to a candidate, or to a person acting on his behalf, which is made subsequent to the effective date of this part, and shall not be applicable to debts incurred prior to such date but which are unpaid as of the effective date of this part. The provisions of this part will be applicable, however, to all credit transactions which occur subsequent to the effective date of the part even though the credit account in

¹ Filed as part of the original document.

Pt. 375

which the transaction takes place was opened prior to the effective date of the part.

PART 375—NAVIGATION OF FOREIGN CIVIL AIRCRAFT WITHIN THE UNITED STATES

Subpart A—General

Sec.

- 375.1 Definitions.
- 375.2 Applicability.
- 375.3 [Reserved]

Subpart B—Authorization

- 375.10 Certain foreign civil aircraft registered in ICAO member states.
- 375.11 Other foreign civil aircraft.

Subpart C—Rules Generally Applicable

- 375.19 Nature of privilege conferred.
- 375.20 Airworthiness and registration certificates.
- 375.21 Airmen.
- 375.22 Flight operations.
- 375.23 Maximum allowable weights.
- 375.24 Entry and clearance.
- 375.25 Unauthorized operations.
- 375.26 Waiver of sovereign immunity.

Subpart D—Authorized Operations

- 375.30 Operations other than commercial air operations.
- 375.31 Demonstration flights of foreign aircraft.
- 375.32 Flights incidental to agricultural and industrial operations outside the United States.
- 375.33 Transit flights, irregular operations.
- 375.34 Indoctrination training.
- 375.35 Free transportation.
- 375.36 Lease of foreign civil aircraft without crew.

Subpart E—Operations Requiring Specific Preflight Authorization of Filing

- 375.40 Permits for commercial air operations.
- 375.41 Agricultural and industrial operations within the United States.
- 375.42 Transport operations—occasional payload charters.
- 375.43 Application for foreign aircraft permit.
- 375.44 Issuance of permit.
- 375.45 Records and reports of occasional payload charters.

Subpart F—Transit Flights.

- 375.50 Transit flights; scheduled international air service operations.

14 CFR Ch. II (1–1–01 Edition)

Subpart G—Penalties

- 375.60 Penalties.

Subpart H—Special Authorization

- 375.70 Special authorization.

APPENDIX A TO PART 375—FORM 4509

AUTHORITY: 49 U.S.C. 1324, 1372, 1502, 1508.

SOURCE: OST Docket No. 42547, 51 FR 7254, Mar. 3, 1986, unless otherwise noted.

Subpart A—General

§ 375.1 Definitions.

As used in this part:

Act means the Federal Aviation Act of 1958, as amended;

Air transportation means the carriage by aircraft of persons or property as a common carrier for compensation or hire or the carriage of mail by aircraft in interstate, overseas, or foreign commerce (see section 101 (10) and (23) of the Federal Aviation Act, 49 U.S.C. 1301);

Category shall indicate a classification of aircraft such as airplane, helicopter, glider, etc.;

Commercial air operations shall mean operations by foreign civil aircraft engaged in flights for the purpose of crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting, or similar agricultural and industrial operations performed in the United States, and any operations for remuneration or hire to, from or within the United States including air carriage involving the discharging or taking on of passengers or cargo at one or more points in the United States, including carriage of cargo for the operator's own account if the cargo is to be resold or otherwise used in the furtherance of a business other than the business of providing carriage by aircraft, but excluding operations pursuant to foreign air carrier permits issued under section 402 of the Act, exemptions, and all other operations in air transportation.

Exemption means an exemption granted, under section 416(b) of the Act, authorizing air transportation by a foreign air carrier;

Foreign air carrier permit means a permit authorizing foreign air transportation by a foreign air carrier pursuant to section 402 of the Act;

Foreign aircraft permit means a permit authorizing navigation of foreign civil aircraft in the United States pursuant to section 1108(b) of the Act and this part;

Foreign civil aircraft means (a) an aircraft of foreign registry that is not part of the armed forces of a foreign nation, or (b) a U.S.-registered aircraft owned, controlled or operated by persons who are not citizens or permanent residents of the United States;

Stop for non-traffic purposes means a landing for any purpose other than taking on or discharging passengers, cargo or mail, and does not include landings for embarking or disembarking stopover passengers or transshipped cargo or mail, or for other than strictly operational purposes.

Type means all aircraft of the same basic design including all modifications thereto except those modifications that result in a change in handling or flight characteristics.

§ 375.2 Applicability.

The provisions of this part regulate the admission to, and navigation in, the United States of foreign civil aircraft other than aircraft operated under authority contained in a foreign air carrier permit or exemption. This part also contains provisions that specify the extent to which certain classes of flight operations by foreign civil aircraft may be conducted, and the terms and conditions applicable to such operations. Nothing in this part shall authorize any foreign civil aircraft to engage in air transportation nor be deemed to provide for such authorization by the Department.

§ 375.3 [Reserved]

Subpart B—Authorization

§ 375.10 Certain foreign civil aircraft registered in ICAO member states.

Subject to the observance of the applicable rules, conditions, and limitations set forth in this part:

(a) Foreign civil aircraft manufactured in a State that at the time of

manufacture was a member of the International Civil Aviation Organization (ICAO), and registered in a State that at the time of flight is a member of ICAO, may be navigated in the United States;

(b) Foreign civil aircraft manufactured in a State that at the time of manufacture was not a member of ICAO, and registered in a State that at the time of flight is a member of ICAO, may be navigated in the United States,

(1) If the State of registry has notified ICAO that the requirements under which it issues or renders valid certificates of airworthiness are equal to or above the minimum standards established pursuant to the Chicago Convention, or

(2) If such notification has not been made to ICAO at the time of flight, there is on file with the Department a statement by the State of registry that, with regard to aircraft of the type that is proposed to be operated hereunder, the requirements under which certificates of airworthiness are issued or rendered valid are equal to or above the minimum standards established pursuant to the Chicago Convention.

§ 375.11 Other foreign civil aircraft.

A foreign civil aircraft other than those referred to in § 375.10 may be navigated in the United States only when (a) the operation is authorized by the Department under the provisions of this part, and (b) the aircraft complies with any applicable airworthiness standards of the Federal Aviation Administration for its operation.

Subpart C—Rules Generally Applicable

§ 375.19 Nature of privilege conferred.

The provisions of this part, and of any permit issued hereunder, together with section 1108(b) of the Act, are designed, among other purposes, to carry out the international undertakings of the United States in the Chicago Convention, in particular Article 5. That article gives foreign aircraft the privilege of “taking on or discharging passengers, cargo or mail” subject to the

§ 375.20

right of the State where such embarkation or discharge takes place to impose such regulations, conditions or limitations as it may consider desirable. The U.S. Congress by the 1953 amendment to section 6 of the Air Commerce Act of 1926, now designated as section 1108(b) of the Act, authorizes the Department to permit such operations only where conditions of reciprocity and the interest of the public in the United States are met. Thus, the operator of any foreign registered aircraft is not entitled as a matter of right to the issuance, renewal or freedom from modification or change in a permit issuable pursuant to this authority. Accordingly, any authority conferred by this part may be withheld, revoked, amended, modified, restricted, suspended, withdrawn, or canceled by the Department in the interest of the public of the United States, without notice or hearing.

§ 375.20 Airworthiness and registration certificates.

Foreign civil aircraft shall carry currently effective certificates of registration and airworthiness issued or rendered valid by the country of registry and shall display the nationality and registration markings of that country. However, a foreign civil aircraft may carry, in lieu of such certificate of airworthiness, an effective special flight authorization issued by the Federal Aviation Administration for the operations being performed.

§ 375.21 Airmen.

Members of the flight crew of a foreign civil aircraft shall have in their personal possession valid airman certificates or licenses authorizing them to perform their assigned functions in the aircraft and for the operation involved issued or rendered valid by the country of registry of the aircraft or by the United States. No such flight crew members shall perform any flight duty within the United States that they are not currently authorized to perform in the country issuing or validating the certificate.

§ 375.22 Flight operations.

Flights of foreign civil aircraft in the United States shall be conducted in ac-

14 CFR Ch. II (1-1-01 Edition)

cordance with the currently applicable rules of the Federal Aviation Administration.

§ 375.23 Maximum allowable weights.

Foreign civil aircraft that are permitted to navigate in the United States on the basis of foreign airworthiness certificates must conform to the limitations on maximum certificated weights prescribed or authorized for the particular variation of the aircraft type, and for the particular category of use, by the country of manufacture of the aircraft type involved.

§ 375.24 Entry and clearance.

All U.S. entry and clearance requirements for aircraft, passengers, crews, baggage and cargo shall be followed.

§ 375.25 Unauthorized operations.

No foreign civil aircraft shall be navigated in the United States unless authorized by this part. Commercial air operations (other than those authorized by § 375.36) shall not be undertaken without a permit issued by the Department.

§ 375.26 Waiver of sovereign immunity.

Owners and operators of aircraft operated under this part that are engaged in proprietary or commercial activities waive any defense of sovereign immunity from suit in any action or proceeding instituted against any of them in any court or other tribunal in the United States for any claim relating to that operation.

Subpart D—Authorized Operations

§ 375.30 Operations other than commercial air operations.

Foreign civil aircraft that are not engaged in commercial air operations into, out of, or within the United States may be operated in the United States and may carry non-revenue traffic to, from or between points in the United States.

§ 375.31 Demonstration flights of foreign aircraft.

Flights of foreign civil aircraft within the United States may be made for the purpose of demonstration of the

Office of the Secretary, DOT

§ 375.35

aircraft or any component thereof (including demonstrations at airshows), provided no persons, cargo or mail are carried for remuneration or hire.

§ 375.32 Flights incidental to agricultural and industrial operations outside the United States.

Foreign civil aircraft that are engaged in agricultural or industrial operations to be performed wholly outside the United States may be navigated into, out of, and within the United States in connection with those operations provided that the aircraft is not at the time engaged in the carriage of passengers, cargo, or mail for remuneration or hire.

§ 375.33 Transit flights, irregular operations.

Foreign civil aircraft carrying passengers, property or mail for remuneration or hire, but not engaged in scheduled international air services, are authorized to navigate nonstop across the territory of the United States and to make stops for non-traffic purposes. The navigation of foreign civil aircraft in the United States is not authorized under this section when the elapsed time between landing and takeoff at a stop in the United States exceeds 24 hours and passengers are permitted to leave the airport or when passengers, property or mail are transferred to another aircraft. Flights involving stops under such circumstances may, however, be performed in the case of emergency relating to the safety of the aircraft, passengers, cargo or crew.

§ 375.34 Indoctrination training.

Foreign civil aircraft may be operated in the United States for the purpose of giving indoctrination training in the operation of the aircraft concerned to a buyer or a buyer's employees or designees. This section does not, however, authorize foreign civil aircraft to be used within the United States for the purpose of flight instruction for remuneration or hire.

§ 375.35 Free transportation.

(a) Foreign civil aircraft may be navigated in the United States by a foreign air carrier for the transportation of persons and property specified

in paragraph (b) of this section over the following non-traffic segments provided such transportation is not for compensation or hire:

(1) Between two or more points in the United States;

(2) Between a point in the United States named in the carrier's section 402 permit or exemption, and a point outside the United States not so named, when authorized in accordance with the provisions of part 216 of this chapter to carry blind sector traffic to or from such unnamed foreign point; and

(3) Between a point in the United States and a point outside thereof when the carrier lands at the United States point for non-traffic purposes in exercise of the privilege granted under the International Air Services Transit Agreement.

(b) Free transportation may be provided under this section for the following categories of persons and property:

(1) Directors, officers and employees, and their parents and immediate families, of the foreign air carrier operating the aircraft;

(2) Directors, officers and employees, and their parents and immediate families, of an air carrier or another foreign air carrier traveling pursuant to a pass interchange arrangement;

(3) Travel agents being transported for the purpose of familiarizing themselves with the carrier's services, if the agents are under no obligation to sell the transporting carrier's services;

(4) Witnesses and attorneys attending any legal investigation in which any such foreign air carrier is involved;

(5) Persons injured in aircraft accidents and physicians and nurses attending such persons;

(6) Any persons or property with the object of providing relief in cases of general epidemic, natural disaster or other catastrophe;

(7) Any person who has the duty of guarding foreign government officials travelling on official business; and

(8) Guests of a foreign air carrier (including members of the press) on delivery flights of newly-acquired or newly-renovated aircraft.

§ 375.36

(c) A charge reasonably related to the value of meals and beverages furnished enroute shall not be deemed to constitute compensation or hire for purposes of this section.

§ 375.36 Lease of foreign civil aircraft without crew.

Foreign civil aircraft that are leased without crew to an air carrier or citizen or permanent resident of the United States, and used by the lessee in otherwise authorized air transportation or commercial air operations, may be operated into, out of, and within the United States in accordance with any applicable regulations prescribed by the Federal Aviation Administration.

Subpart E—Operations Requiring Specific Preflight Authorization of Filing

§ 375.40 Permits for commercial air operations.

(a) *Permit required.* Except for aircraft being operated under a foreign air carrier permit, an exemption, or as otherwise provided in Subpart D or H of this part, foreign civil aircraft may engage in commercial air operations only if there is carried on board the aircraft a permit issued by the Department in accordance with this subpart authorizing the operations involved.

(b) Aircraft are not authorized to engage in air transportation under this section. Where an operation involves the carriage of persons, property or mail for compensation or hire, the Department will determine whether particular flights for which a permit is sought will be in common carriage, and therefore in air transportation, based on all the facts and circumstances surrounding the applicant's entire operations. The burden rests upon the applicant in each instance to demonstrate by an appropriate factual showing that the contemplated operation will not constitute common carriage from, to or within the United States. In general, an applicant that holds itself out to the public, or to a particular class or segment, as willing to furnish transportation for hire is a common carrier.

14 CFR Ch. II (1–1–01 Edition)

§ 375.41 Agricultural and industrial operations within the United States.

Foreign civil aircraft shall not be used for such commercial air operations as crop dusting, pest control, pipeline patrol, mapping, surveying, banner towing, skywriting or similar agricultural or industrial operations within the United States, including its territorial waters and overlying airspace, unless a permit has been issued by the Department and the operation is conducted in accordance with all applicable State and local laws and regulations as well as the applicable provisions of this part.

§ 375.42 Transport operations—occasional planeload charters.

Occasional planeload charters may be authorized where, because of their limited nature and extent, special equipment or facilities utilized, or other circumstances pertaining to them, it appears that they are not within the scope of the applicant's normal holding out of transportation services to the general public. Such charters are normally limited to those in which the entire capacity of the aircraft is engaged by a single charterer, and since they are occasional in nature, should not exceed for any one applicant more than six flights during a calendar year. This part does not authorize operations that involve solicitation of the general public such as is usually involved in the transportation of individually-ticketed passengers or individually-waybilled cargo, or in which the charterer is a travel agent, a charter operator, a broker, an air freight forwarder or any other organization that holds itself out to the general public to provide transportation services. Carriage of cargo for the operator's own account is governed by the provisions of this section if the cargo is to be resold or otherwise used in the furtherance of a business other than the business of providing carriage by aircraft.

§ 375.43 Application for foreign aircraft permit.

(a) Applications for foreign aircraft permits shall be submitted on OST Form 4509, (Appendix A), in duplicate,

Office of the Secretary, DOT

§ 375.45

addressed to the Chief, Discrete Operations Branch, Licensing Division, P-45, Office of Aviation Operations. Upon a showing of good cause, applications may be made by telegram or by telephone.

(b) Applications shall contain a proper identification (including citizenship) of the applicant (the operator of the aircraft concerned) and of the owner thereof (if different from the applicant), a description of the aircraft by make, model, and registration marks; and a full description of the operations for which authority is desired, indicating type and dates of operations and number of flights, and routing. In the case of cargo flights, the names of all contractors, agents, if any, and the beneficial owner of the cargo, and a description of the cargo and of the proposed operations shall be provided. In the case of passenger flights, a full identification and description of the group chartering the aircraft, and identification of the travel agent, if any, shall be provided. Applications shall also contain a statement as to whether the applicant's homeland allows operators of U.S.-registered aircraft to conduct similar operations.

(c) Applications shall be filed at least 15 days in advance of the proposed commencement date of the operations. The Department may direct the applicant to serve copies of its application on additional persons. Late applications may be considered by the Department upon a showing of good cause.

(d)(1) Any party in interest may file a memorandum supporting or opposing an application. Two copies of each memorandum shall be filed within 7 business days after the application is filed but no later than the proposed commencement date of the operations. Memoranda will be considered to the extent practicable; the Department may act on an application without waiting for supporting or opposing memoranda to be filed.

(2) Each memorandum shall set forth the reasons why the applications should be granted or denied, accompanied by whatever data, including affidavits, the Department is asked to consider.

(3) A copy of each memorandum shall be served on the applicant.

(e)(1) Unless otherwise ordered by the Department, each application and memorandum filed in response shall be available for public inspection at the Licensing Division of the Office of Aviation Operations immediately upon filing. Notice of the filing of all applications shall be published in the Department's Weekly List of Applications Filed.

(2) Any person objecting to public disclosure of any information in an application or memorandum must state the grounds for the objection in writing. If the Department finds that disclosure of all or part of the information should be withheld under applicable provisions of law, and the public interest does not require disclosure, it will order that the injurious information be withheld.

(Approved by the Office of Management and Budget under control number 2106-0002)

§ 375.44 Issuance of permit.

(a) The Department will issue a foreign aircraft permit if it finds that the proposed operations meet the requirements of this part and are in the public interest. Foreign aircraft permits may be conditioned or limited by the Department. Permits must be carried aboard the applicant's aircraft during flight over U.S. territory, and are not transferable.

(b) In determining whether to grant a particular application, the Department will consider, among other factors, the extent to which the country of the applicant's nationality deals with U.S. civil aircraft operators on the basis of substantial reciprocity, and whether the operation is otherwise in the public interest.

§ 375.45 Records and reports of occasional planeload charters.

(a) *Cargo documents.* The holder of a permit for cargo operations shall issue a manifest or shipping document to its shipper with respect to each shipment.

(b) [Reserved]

(c) *Contents of documents for passenger flights.* The holder of a permit for passenger charters originating or terminating in the United States shall require each charterer to file with it

prior to flight a list of names and addresses of all passengers to be transported on each flight.

(d) *Reports of unused authority.* All foreign operators of occasional plane-load charters for which authority is granted must notify the Department, in writing, not later than 15 days after the expiration of their permits, or their failure to use this authority. The unused authority shall otherwise be deemed to have been exercised.

Subpart F—Transit Flights

§ 375.50 Transit flights; scheduled international air service operations.

(a) *Requirement of notice.* Scheduled international air services proposed to be operated pursuant to the International Air Services Transit Agreement in transit across the United States may not be undertaken by foreign civil aircraft unless the operator of such aircraft, and (if other than the operator) the carrier offering such service to the public, has, not less than 30 days prior to the date of commencement of such service, filed a Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement in accordance with the provisions of paragraphs (b) and (c) of this section.

(b) *Filing of the notice.* An original and two copies of the Notice shall be filed with the Chief, Discrete Operations Branch, Licensing Division, P-45, Office of Aviation Operations. Copies of the Notice shall be served upon the Department of State and the Administrator of the Federal Aviation Administration. The filing date shall be the date of actual receipt by the Department.

(c) *Content of notice.* A “Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement” shall be clearly labeled as such, and as a minimum shall set forth, with whatever detail may be necessary, the following information:

(1) The name, country or organization, and citizenship of the operator, and, if other than the operator, of the carrier offering the services to the public. If any interest (direct or indirect) in the operator or offeror of services is held by nationals of a country other

than the country of organization or citizenship, the nature and extent of such interest must be fully disclosed. If any officer or director of the operator or carrier offering the services is a national of a country other than the country of organization or citizenship, the position of duties of such officer or director, and the officer and director’s relevant position in relation to other officers and directors must similarly be fully disclosed. If the information required in this subsection has been previously supplied to the Department, the applicant may incorporate it by reference.

(2) The State of registration of the aircraft proposed to be operated.

(3) A full description of the proposed operations including the type of operations (passenger, property, mail, or combination), date of commencement, duration and frequency of flights, and routing (including each terminal and intermediate point to be served).

(4) A statement as to whether or not any advertisement or publication of the proposed operations has been made in the United States. If there has been any advertisement or publication of the operations in the United States, copies of all such advertisements or publications shall be included.

(5) Any change with respect to these matters (minor changes in schedules or routing excepted) shall also be filed with the Department.

(d) *Authorized operations.* If the operator and the carrier offering services to the public (if different from the operator) have filed a “Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement,” at least 30 days before the date of commencement of the proposed operations in accordance with paragraphs (a), (b), and (c) of this section, the described operations may be commenced and performed without further authorization from the Department, unless and until the Department issues an order notifying the operator and/or the carrier offering the services to the public that, considering the matters submitted in the Notice, the Department is of the view that a question may exist as to whether:

(1) The proposed services are authorized pursuant to the terms of the International Air Services Transit Agreement;

(2) Substantial ownership and effective control are vested in nationals of a State party to the International Air Services Transit Agreement;

(3) The proposed operations will be in compliance with the laws of the United States, the Department's rules, or the provisions of this section; or

(4) The operator or its government have performed their obligations under the International Air Services Transit Agreement.

(e) *Prohibited operations.* If the Department issues an order of notification as described in paragraph (d) of this section, neither the operator, nor the carrier offering the services to the public, shall commence the proposed operations, or, except as may be otherwise specified in the order, operate any flights subsequent to receipt of the order, unless and until the Department issues a foreign aircraft permit pursuant to the provisions of section 1108(b) of the Act and this part specifically authorizing such operations.

(f) *Foreign aircraft permit—application and procedures.* If the Department issues an Order of Notification as described in paragraph (d) of this section, the carrier's Notice of Proposed Transit Flights Pursuant to the International Air Services Transit Agreement shall be treated as an application for the required foreign aircraft permit, and further procedures on such application shall be as directed by the Department.

(g) *Short notice filing.* Nothing in this section shall be construed as precluding the filing of an application for a foreign aircraft permit to perform transit operations pursuant to the International Air Services Transit Agreement less than 30 days in advance of the proposed operation. No such flights shall be operated, however, unless or until a specific foreign aircraft permit has been issued by the Department.

(h) *Nature of privilege conferred.* Air transportation is not authorized under this section, and the burden rests upon each operator and carrier to show that the proposed operations will not con-

stitute air transportation within the meaning of the Federal Aviation Act. In addition, each operator and carrier has the burden of demonstrating that the proposed operations are authorized by the International Air Services Transit Agreement, and that the appropriate authorization should not be withheld pursuant to section 5 of Article I thereof. Stopovers for the convenience or pleasure of the passengers are not authorized under this section and stops other than for strictly operational reasons shall not be made. The consolidation on the same aircraft of an operation under this section with a service authorized under section 402 or 416(b) of the Act is not authorized by this section. Any authorization or permit granted under this section is non-transferable, and may be withheld, revoked, suspended, withdrawn, or cancelled by the Department, without notice or hearing, if required by the public interest. Operators of aircraft registered in countries not parties to the International Air Services Transit Agreement shall make special application to the Department under § 375.70.

Subpart G—Penalties

§ 375.60 Penalties.

The operation of a foreign aircraft within the United States or over adjacent territorial waters in violation of the provisions of this part constitutes a violation of the Federal Aviation Act and of this chapter, and may, in addition, constitute a violation of the rules of the Federal Aviation Administration. Such operation makes the person or persons responsible for the violation or violations subject to a civil penalty as provided in section 901 of the Act, and to the alteration, amendment, modification, suspension or revocation of any permit issued under this part and of any U.S. certificate involved as provided in section 609 of the Act. Engaging in air transportation as defined in the Act by a foreign aircraft without a foreign air carrier permit issued pursuant to section 402 of the Act or an exemption, or in violation of the terms of such authority constitutes not only a violation of this part but of title IV of

§ 375.70

14 CFR Ch. II (1–1–01 Edition)

the Act as well, which entails a criminal penalty as set forth in section 902 of the Act.

Subpart H—Special Authorization


§ 375.70 Special authorization.

Any person desiring to navigate a foreign civil aircraft within the United States other than as specifically provided in this part may petition the De-

partment for a special authorization to conduct the particular flight or series of flights. Such authorization may be issued only if the Department finds that the proposed operation is fully consistent with the applicable law, that the applicant's homeland grants a similar privilege with respect to operators of U.S.-registered aircraft, and that the proposed operation is in the interest of the public of the United States.

APPENDIX A TO PART 375—FORM 4509

Approved by OMB
No. 2106-0002
Expires 11/30/87

 U.S. Department of Transportation APPLICATION FOR FOREIGN AIRCRAFT PERMIT OR SPECIAL AUTHORIZATION UNDER PART 375 (See Instructions On Reverse Side)		DO NOT WRITE—FOR OFFICIAL USE ONLY Disposition of Applications: <input type="checkbox"/> Approved <input type="checkbox"/> Approved, subject to condition(s) on reverse. <input type="checkbox"/> Disapproved/Dismissed for reason(s) cited on reverse. Under assigned authority _____ Effective from _____ to _____ Director, Office of Aviation Operations	
TO: Department of Transportation Licensing Division, P-45 Office of Aviation Operations Washington, D.C. 20590		Operations pursuant to this authorization shall conform to Part 375 of the Department's Regulations and Part 91 of the Federal Aviation Regulations. THIS PERMIT MUST BE CARRIED ABOARD AIRCRAFT DURING FLIGHT OVER UNITED STATES TERRITORY.	
1. Name and address of applicant: (operator) Nationality:		3. Aircraft make, model, and registration or identification marks:	
2. Send authorization to: a. Name and address: b. Telephone:		4. Country in which aircraft is registered:	
5. Name and address of registered owner of aircraft:		6. Name and address of contractor/charterer:	
7. Dates of flights:			
8. Planned routing of flights (indicate non-traffic stops by asterisks):			
9. Description of operations (see instructions) (Check one): Passenger <input type="checkbox"/> Cargo <input type="checkbox"/> Agricultural or Industrial operation <input type="checkbox"/>			
10. Does the nation which is the domicile of the applicant grant to United States carriers a privilege similar to that requested herein? _____; if so, has the fact of such reciprocity been established with the Department? _____. If the fact has not been established with the Department, provide documentation to establish such reciprocity.			

OST Form 4509 (Rev. 2/20/86)

11. If application is being filed late, state reasons for lateness:
12. Other information requested by the Department:
CERTIFICATION I hereby certify that the flights for which authority is sought herein conform to the requirements of the applicable regulations and orders of the Department of Transportation.
<div style="display: flex; justify-content: space-between;"> <div style="width: 45%; text-align: center;"> _____ (Date) </div> <div style="width: 45%; text-align: center;"> _____ (Signature and title of authorized officer) </div> </div>

INSTRUCTIONS

1. Prepare an original and one copy of this application according to Section 375.43 of the Department's Regulations. If extra space is required to complete an item, continue on a separate sheet of paper.
2. Under Item 9:
 - (a) For passenger flights, provide full identification or description of group contracting for charter, and name and address of travel agent, if any.
 - (b) For cargo flights, provide the names of all contractors, description of cargo, beneficial owner of cargo, and provide a full description of the proposed operation including nature of any service to be performed by any exporter, importer, or transportation agent.
 - (c) For agricultural or industrial operations, describe area involved and purpose of operations.
3. Send the application to: Department of Transportation, Licensing Division, P-45, Office of Aviation Operations, Washington, D.C. 20590.
4. See Part 91 of Federal Aviation Regulations and 375 of the Department's Regulations (14 CFR 91 and 14 CFR 375) for a full statement of the rules respecting navigation of foreign civil aircraft within the United States.

DO NOT WRITE—FOR OFFICIAL USE ONLY
Exercise of the authorization is subject to the following condition(s): <u>OR</u> Application is disapproved/dismissed for the following reason(s):

PART 377—CONTINUANCE OF EXPIRED AUTHORIZATIONS BY OPERATION OF LAW PENDING FINAL DETERMINATION OF APPLICATIONS FOR RENEWAL THEREOF

Subpart A—General Provisions

Sec.

377.1 Definitions.

377.2 Applicability of part.

377.3 Authorizations not covered by 5 U.S.C. 558(c).

377.4 Certain authorizations with alternative termination dates.

377.5 Procedure to obtain Board interpretation.

Subpart B—Renewal Applications and Procedure Thereon

377.10 Requirements for, and effect of, renewal applications.

377.11 Processing of defective renewal applications.

AUTHORITY: 49 U.S.C. Chapters 401, 461; 5 U.S.C. 558, 559.

Subpart A—General Provisions

§ 377.1 Definitions.

As used in this part:

Authorization means any agency certificate, approval, statutory exemption or other form of permission granted pursuant to sections 101(3), 401, 402, 408, 409, 412 and 416 of the Federal Aviation Act of 1958, as amended. Where any operating authorization creates more than one separate route, each of these shall be deemed a separate authorization for the purposes of this part.

Renewal application means any application filed in conformity with the requirements of this part which requests either a renewal or a new license and is intended to invoke the provisions of the last sentence of 5 U.S.C. 558(c).

Route means an authorization which permits an air carrier to render unlimited regularly scheduled service between a specifically designated pair of terminal points and intermediate points, if any.

[SPR-84, 40 FR 24998, June 12, 1975, as amended by SPR-184, 47 FR 7212, Feb. 18, 1982]

§ 377.2 Applicability of part.

(a) This part implements the last sentence of 5 U.S.C. 558(c) with regard

to temporary authorizations granted by the Board.

NOTE: The last sentence of 5 U.S.C. 558(c) provides: "When the licensee has made timely and sufficient application for a renewal or a new license in accordance with agency rules, a license with reference to an activity of a continuing nature does not expire until the application has been finally determined by the agency."

(b) Nothing in this part prevents the Board from terminating at any time, in accordance with law, any authorization or any extension of an authorization.

(c) Nothing in this part constitutes a determination that any given authorization is a "license with reference to an activity of a continuing nature" within the meaning of 5 U.S.C. 558(c).

[SPR-184, 47 FR 7212, Feb. 18, 1982]

§ 377.3 Authorizations not covered by 5 U.S.C. 558(c).

The Board hereby determines that the following authorizations are not licenses "with reference to an activity of a continuing nature" within the meaning of 5 U.S.C. 558(c):

(a) Authorizations granted for a specified period of 180 days or less; and

(b) Authorizations, other than those granted under section 401 of the Act, that by their terms are subject to termination at an uncertain date upon the happening of an event, including fulfillment of a condition subsequent or occurrence of a contingency.

[SPR-184, 47 FR 7212, Feb. 18, 1982]

§ 377.4 Certain authorizations with alternative termination dates.

Unless granted under section 401 of the Act, an authorization that by its terms is subject to termination alternatively, either at an uncertain date upon the happening of an event or upon the arrival of a specified date:

(a) Will not be considered a "license with reference to an activity of a continuing nature" within the meaning of 5 U.S.C. 558(c), if the event occurs before the specified date; and

(b) Ordinarily (subject to Board interpretation under § 377.5) will be considered such a license, if the event does not occur before the specified date and that date is more than 180 days after the effective date of the authorization.

[SPR-184, 47 FR 7212, Feb. 18, 1982]

§ 377.5

14 CFR Ch. II (1–1–01 Edition)

§ 377.5 Procedure to obtain Board interpretation.

(a) The Board will determine upon written request by the holder of a temporary authorization or by any competitively affected air carrier or foreign air carrier, or upon its own initiative, whether the temporary authorization is a “license with reference to an activity of a continuing nature” within the meaning of 5 U.S.C. 558(c).

(b) A written request for such a Board determination shall be filed at least 60 days before the deadline set forth in § 377.10 for a timely renewal application.

(c) The filing of such a written request shall not affect the timeliness requirements for renewal applications that are set forth in § 377.10 or any other applicable Board rule or order.

[SPR–184, 47 FR 7212, Feb. 18, 1982]

Subpart B—Renewal Applications and Procedure Thereon

§ 377.10 Requirements for, and effect of, renewal applications.

(a) *Identification of authorization covered by renewal application.* Each renewal application shall identify the authorization or authorizations to which it is intended to relate. The application shall indicate the applicant's intention to rely upon 5 U.S.C. 558(c) as implemented by this part. In case of applications for renewal of an authorization for route service, the renewal application shall specifically identify the separate routes which the applicant proposes to continue serving pursuant to the expiring authorization, pending final determination of the renewal application.

(b) *Contents of renewal application.* The application must contain all the information required by law and the Board's regulations, and meet the requirements thereof as to form. The new authorization sought need not be of the same duration as the expiring authorization. If the application relates to renewal of route authority, it must contain, as a minimum, a request for renewed authority to render route service between the terminals named in each separate route for which renewal is requested.

(c) *Timeliness.* The application must be filed and served in compliance with applicable law and the Board's regulations at least 60 days before the expiration date of the outstanding temporary authorization, except that:

(1) For certificates issued under section 401 of the Act with a specified expiration date, the deadline is 180 days before the expiration date;

(2) For certificates issued under section 401 of the Act that terminate by their terms upon the happening of an event that could not be foreseen, the deadline is 30 days after the time that the carrier has notice that the event will occur or has occurred;

(3) For foreign air carrier permits issued under section 402 of the Act and exemptions issued under section 416 to non-U.S. citizens, the deadline is the expiration date itself;

(4) For renewal by substantially equivalent certificate authority of fixed term route authorizations granted by exemption and for interim extension of the exemption, pursuant to § 399.18 of this chapter, the deadline is 90 days before the expiration date; and

(5) Nothing in this part supersedes a requirement for earlier filing contained in any law, Board rule or order, or temporary authorization.

(d) *Effect.* In the case of authorizations which constitute licenses with reference to activities of a continuing nature within the meaning of 5 U.S.C. 558(c), the filing of an application complying in all respects with the requirements of paragraphs (a) through (c) of this section shall extend the authorization to which it relates as then outstanding in its entirety, together with all applicable terms, conditions and limitations, until the application has been finally determined by the Board. In the case of routes granted under section 401 of the Act, the duty to render adequate service continues to attach to every point as provided in the expired authorization which is extended pursuant to this provision. The date of final determination of the application shall be the date when the final order determining the application takes effect, or when the applicable period for filing of petitions for rehearing, reargument or reconsideration expires, or when a

Office of the Secretary, DOT

§ 380.1

timely filed petition therefor is denied, whichever occurs latest.

[SPR-84, 40 FR 24998, June 12, 1975, as amended by SPR-184, 47 FR 7212, Feb. 18, 1982; 65 FR 6457, Feb. 9, 2000]

§ 377.11 Processing of defective renewal applications.

When the Board determines that a renewal application does not comply with the requirements of this part, or that it does not relate to a license with reference to an activity of a continuing nature, it will so notify the applicant. The applicant may amend his application to cure the deficiency as a matter of right at any time prior to the date when the application was due pursuant to § 377.10(c).

[SPR-84, 40 FR 24998, June 12, 1975]

PART 380—PUBLIC CHARTERS

Subpart A—General Provisions

Sec.

- 380.1 Applicability.
- 380.2 Definitions.
- 380.3 General provisions.
- 380.4 Enforcement.

Subpart B—Conditions and Limitations

- 380.10 Public Charter requirements.
- 380.11 Payment to direct air carrier(s).
- 380.12 Cancellation by charter operator and notice to participants.
- 380.13 Prohibition on sale of round trips with open returns.
- 380.14 Unused space.
- 380.15 Substitution for charter participants.
- 380.17 Charters conducted by educational institutions.

Subpart C—Requirements Applicable to Charter Operators

- 380.20 Relief from the Statute.
- 380.21–380.23 [Reserved]
- 380.24 Suspension of exemption authority.
- 380.25 Prospectus filing and related requirements.
- 380.26 Discrimination.
- 380.27 Methods of competition.
- 380.28 Charter prospectus.
- 380.29 Charter contract.
- 380.30 Solicitation materials.
- 380.31 General requirements for operator-participant contracts.
- 380.32 Specific requirements for operator-participant contracts.
- 380.33 Major changes in itinerary or price; refunds.

- 380.33a Operator's option plan.
- 380.34 Security and depository agreements.
- 380.34a Substitution of direct air carrier's security or depository agreement.
- 380.35 Disbursements from depository account.
- 380.36 Record retention.

Subpart D—Requirements Applicable to Direct Air Carriers

- 380.40 Charter not to be performed unless in compliance with this part 380.
- 380.41–380.42 [Reserved]
- 380.43 Cancellations by direct air carriers.
- 380.45 Suspension of exemption authority.
- 380.46 Charter trip reporting.

Subpart E—Registration of Foreign Charter Operators

- 380.60 Purpose.
- 380.61 Operation by foreign charter operators.
- 380.62 Registration applications.
- 380.63 Objections to registration applications.
- 380.64 Department action on a registration application.
- 380.65 Notification of change of operations or ownership.
- 380.66 Cancellation or conditioning of the registration.
- 380.67 Waiver of sovereign immunity.

APPENDIX A TO PART 380—PUBLIC CHARTER OPERATOR'S SURETY BOND UNDER PART 380 OF THE SPECIAL REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION (14 CFR PART 380)

APPENDIX B TO PART 380—PUBLIC CHARTER SURETY TRUST AGREEMENT

AUTHORITY: 49 U.S.C. 40101, 40102, 40109, 40113, 41101, 41103, 41301, 41504, 41702, 41708, 41712, 46101.

SOURCE: Docket No. OST-97-2356, 63 FR 28241, May 22, 1998, unless otherwise noted.

Subpart A—General Provisions

§ 380.1 Applicability.

This part applies to Public Charter air transportation of passengers in interstate or foreign air transportation, whether furnished by direct air carriers or Public Charter operators. This part also relieves such charter operators from various provisions of subtitle VII of Title 49 of the United States Code (statute), formerly Title IV of the Federal Aviation Act of 1958, as amended, for the purpose of enabling

§ 380.2

them to provide Public Charters utilizing aircraft chartered from such direct air carriers. It also declines jurisdiction over foreign Public Charter operators operating foreign-originating Public Charters.

§ 380.2 Definitions.

For the purposes of this part:

Certificated air carrier means a U.S. direct air carrier holding a certificate issued under the statute.

Charter flight means a flight operated under the terms of a charter contract between a direct air carrier and its customer. It does not include scheduled air transportation, scheduled foreign air transportation, or nonscheduled cargo air transportation, sold on an individually ticketed or individually waybilled basis.

Direct air carrier means a certificated or foreign air carrier, or an air taxi operator or commuter air carrier registered under part 298 of this chapter, or a Canadian charter air taxi operator registered under part 294 of this chapter, that directly engages in the operation of aircraft under a certificate, permit or exemption issued by the Department.

Educational institution means a school that is operated as such on a year-round basis and is empowered to grant academic degrees or secondary school diplomas by any government in the United States or by a foreign government.

Foreign air carrier means a direct air carrier that holds a foreign air carrier permit issued under the statute or an exemption issued under the statute authorizing direct foreign air transportation.

Foreign Public Charter operator means an indirect air carrier which is not a citizen of the United States as defined in the statute, that is authorized to engage in the formation of groups for transportation on Public Charters in accordance with this part.

Indirect air carrier means any person who undertakes to engage indirectly in air transportation operations and who uses for such transportation the services of a direct air carrier.

Public Charter means a one-way or round-trip charter flight to be performed by one or more direct air car-

14 CFR Ch. II (1–1–01 Edition)

riers that is arranged and sponsored by a charter operator.

Public Charter operator means a U.S. or foreign Public Charter operator.

Security agreement means:

(1) A surety bond issued by a company—

(i) That is listed in the Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better, or

(ii) That is listed in the U.S. Department of Treasury's notice listing companies holding Certificates of Authority as acceptable sureties on Federal bonds and as acceptable reinsuring companies, published in the FEDERAL REGISTER in the first week in July; or

(2) A Surety trust agreement or a letter-of-credit, issued by a Federal Deposit Insurance Corporation-insured financial institution, which provides substantially equivalent protection.

Statute means Subtitle VII of Title 49 of the United States Code (Transportation).

Sub-operator means a Public Charter operator that has contracted for its charter seats from a Public Charter operator that has contracted from one or more direct air carriers. A sub-operator is itself an indirect air carrier, not an agent of the Public Charter operator from which it has obtained its seat.

U.S. Public Charter operator means an indirect air carrier that is a citizen of the United States as defined in 49 U.S.C. 40102(a) and that is authorized to engage in the formation of groups for transportation on Public Charters in accordance with this part.

§ 380.3 General provisions.

(a) Public Charters may be operated on a one-way or round-trip basis, with no minimum group or contract size. Public Charters may be sold on an air-only basis, or with mandatory or optional land arrangements.

(b) A U.S. Public Charter operator operating a Public Charter which originates in a foreign country shall not be subject to the requirements of §§ 380.25, 380.28, 380.30 and 380.35.

(c) The Department declines to exercise jurisdiction over a foreign Public Charter operator which operates a Public Charter originating in a foreign

country, but reserves the right to exercise its jurisdiction over any foreign Public Charter operator at any time its finds that such action is in the public interest.

(d)(1) An educational institution operating a Public Charter need not comply with the financial security requirements of § 380.34 if each student participant in the charter is enrolled in a formal academic course of study outside the United States, sponsored by or in conjunction with that institution, that is of at least four weeks' duration.

(2) The spouse, children, and parents of a student participant may accompany the participant on a charter operated under this section.

(e) The Department, upon application or on its own initiative, may waive any of the provision of this part if it finds such action to be in the public interest.

§ 380.4 Enforcement.

In the case of any violation of the provision of the Statute or of this part, or any other rule, regulations, or order issued under the Statute, the violator may be subject to a proceeding pursuant to the Statute before the Department or a U.S. district court, as the case may be, to compel compliance therewith; to civil penalties pursuant to the provisions of the Statute, or to criminal penalties pursuant to the provisions of the Statute, or other lawful sanctions.

Subpart B—Conditions and Limitations

§ 380.10 Public Charter requirements.

Public Charters under this part shall meet the following requirements:

(a)–(b) [Reserved]

(c) If the charter is on a round-trip basis, the departing flight and returning need not be performed by the same direct air carrier.

(d) The air transportation portion of the charter must be performed by direct air carriers that hold authority under Chapter 411 and 413 of the Statute, or are operating under 14 CFR part 298, except that only U.S. citizen direct air carriers may provide air transportation for operations in interstate air transportation.

§ 380.11 Payment to direct air carrier(s).

Except for air taxi operators and commuter air carriers (which are governed by 14 CFR 298.38) and Canadian charter air taxi operators (which are governed by 14 CFR 294.32), the direct air carrier(s) shall be paid in full for the cost of the charter transportation (for both legs, if a round-trip charter) prior to the scheduled date of flight departure, as provided for in the basic charter regulations applicable to the direct air carrier(s) under part 212 of this chapter.

§ 380.12 Cancellation by charter operator and notice to participants.

(a) The charter operator may not cancel a charter for any reason (including insufficient participation), except for circumstances that make it physically impossible to perform the charter trip, less than 10 days before the scheduled date of departure of the outbound trip.

(b) If the charter operator cancels 10 or more days before the scheduled date of departure, the operator must so notify each participant in writing within 7 days after the cancellation but in any event not less than 10 days before the scheduled departure date of the outbound trip. If a charter is canceled less than 10 days before scheduled departure (i.e., for circumstances that make it physically impossible to perform the charter trip), the operator must get the message to each participant as soon as possible.

§ 380.13 Prohibition on sale of round trips with open returns.

The charter operator shall not accept any participant's payment for return transportation unless the participant has specified a particular return flight.

§ 380.14 Unused space.

Noting contained in this part shall preclude a charter operator from utilizing any unused space on an aircraft by it for a Public Charter for the transportation, on a free or reduced basis, of such charter operator's employees, directors, and officers, and parents and immediate families of such persons.

§ 380.15

§ 380.15 Substitution for charter participants.

Substitutes may be arranged for charter participants at any time preceding departure. Participants who provide the charter operator or its sales agent with a substitute participant, or who are substituted for by a participant found by the operator, shall receive a refund of all moneys paid to the operator, except that the operator may reserve the right to retain an administrative fee not to exceed \$25 for effecting the substitution.

§ 380.17 Charters conducted by educational institutions.

(a) This section shall apply only to charters conducted by educational institutions for charter groups comprised of bona fide participants in a formal academic course of study abroad which is of at least 4 weeks duration. The charter group may also include a student participant's immediate family (spouse, children, and parents). Except as modified in this section, all terms and conditions of this part applicable to the operation of Public Charters shall apply to charters conducted by educational institutions.

(b) An educational institution conducting such a charter shall submit to the Office of Aviation Analysis, Special Authorities Division, a statement, signed by its president, certifying that it meets the definition of "educational institution" set forth in § 380.2.

(c) An educational institution conducting such a charter need not comply with the requirements of §§ 380.25, 380.28, 380.34, and 380.35.

Subpart C—Requirements Applicable to Charter Operators

§ 380.20 Relief from the Statute.

(a) To the extent necessary to permit them to organize and arrange public charters, charter operators and foreign charter operators are hereby relieved from the following provisions of Subtitle VII of Title 49 of the U.S. Code, only if and so long as they comply with the provisions and the conditions imposed by this part:

- (1) Chapter 411.
- (2) Chapter 413.

14 CFR Ch. II (1–1–01 Edition)

(3) Chapter 415.

(4) Chapter 419.

(5) If foreign charter operators receive interstate air transportation rights, any other provision of the statute that would otherwise prohibit them from organizing and arranging Public Charters in interstate air transportation.

(b) A charter operator who is a citizen of the United States shall not be subject to the following requirements with respect to Public Charters that originate in a foreign country: §§ 380.25, 380.28, and 380.30 through 380.35.

§§ 380.21–380.23 [Reserved]

§ 380.24 Suspension of exemption authority.

The Department reserves the power to deny the exemption authority of any charter operator, without hearing, if it finds that such action is necessary in the public interest or is otherwise necessary in order to protect the rights of the traveling public.

§ 380.25 Prospectus filing and related requirements.

A charter operator may organize and operate a Public Charter only in accordance with this part, and subject to the following conditions:

(a) No charter operator shall operate, sell, receive money from any prospective participant for, or offer to sell or otherwise advertise a charter or series of charters until the Office of Aviation Analysis, Special Authorities Division, has accepted a Public Charter prospectus as described in § 380.28.

(b) If within 10 days after the filing the Department notifies the charter operator that it has rejected the prospectus for noncompliance with this part, the prohibitions set forth in paragraph (a) of this section shall continue until the Department advises that it has accepted the prospectus.

(c) The following amendments to a filed prospectus may be made:

- (1) The addition or cancellation of any flight;
- (2) A change in any flight, date, origin city or destination city; and
- (3) A change in or addition of any direct air carrier, securer, or depository bank.

(d) The charter operator shall amend the prospectus to reflect any change described in paragraph (c) of this section. The amendment shall be filed in the manner and form used for the original prospectus. It shall become effective upon filing unless the operator is otherwise notified.

(e) The charter operator shall notify the depository bank (if any) and the securer of any change described in paragraph (c) of this section not later than when filing a prospectus amendment to reflect the change. If the securer is unable to adjust the security agreement as required by the change, the Office of Aviation Analysis, Special Authorities Division shall be advised of this fact within 2 business days.

(Approved by the Office of Management and Budget under Control Number 2106-0005).

§ 380.26 Discrimination.

No charter operator shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever, or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

§ 380.27 Methods of competition.

No charter operator shall engage in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof.

§ 380.28 Charter prospectus.

(a) The charter prospectus shall include an original and two copies of the following:

(1) From the charter operator and the direct air carrier:

(i) The proposed flight schedule, listing the origin and destination cities, dates, type of aircraft, number of seats, and charter price for each flight;

(ii) The tour itinerary (if any) including hotels (name and length of stay at each), and other ground accommodations and services; and

(iii) A statement that they have entered into a charter contract that cov-

ers the proposed flight schedule, that the contract complies with all applicable Department regulations, and that a copy of the schedule has been sent to the depository bank (if any) and the operator's securer. The schedule shall be identified with a number assigned by the charter operator that does not duplicate any schedule numbers assigned by the operator to other proposed flight schedules. The proposed flight schedule, tour itinerary (if any), and statement shall be filed on OST Form 4532.

(2)(i) From the charter operator and the securer, a statement:

(A) That they have entered into a security agreement covering the proposed flight schedule that complies with § 380.34, including the amount of the coverage, the number assigned to it by the securer, and the amount of any outstanding claims against it, and

(B) That the securer has received a copy of the proposed flight schedule. The statement shall identify the proposed flight schedule by the schedule number assigned by the charter operator in accordance with paragraph (a) of this section. If there are any outstanding claims against the agreement, the charter operator and securer shall also state that they have executed a rider or amendment increasing the coverage by the amount of the claims, or that the securer will separately pay any claims for which it may be liable without impairing the agreement or reducing the amount of its coverage.

(ii) These statements shall be filed on OST Form 4533.

(3) If a depository agreement is used, a statement from the charter operator, the direct air carrier, and the depository bank:

(i) That they have entered into a depository agreement covering the proposed flight schedule that complies with § 380.34, and

(ii) That the bank has received a copy of the proposed flight schedule by the schedule number assigned by the charter operator in accordance with paragraph (a)(1) of this section. This statement shall be filed on OST Form 4534.

(b) Each of the statements described in paragraph (a) of this section shall also include the names and addresses of

§ 380.29

the parties to it, and the originals shall be signed by those parties.

(c) The prospectus may cover a series of charters performed by one charter operator if the departure of the last charter is not more than one year after the departure of the first.

(d) If the prospectus covers a series of charters and the air transportation will be performed by more than one direct air carrier, the prospectus shall include separate statements in accordance with paragraphs (a)(1) and (a)(3) of this section to cover the flights that will be performed by each direct carrier.

(Approved by the Office of Management and Budget under Control Number 2106-0005).

§ 380.29 Charter contract.

The charter contract between the charter operator or foreign charter operator and the direct air carrier shall evidence a binding commitment on the part of the carrier to furnish the air transportation required for the trip or trips covered by the contract.

§ 380.30 Solicitation materials.

(a) All solicitation materials for a Public Charter shall include the name of the charter operator and the name of the direct air carrier.

(b) Any solicitation material that states a price per passenger shall also include one of the following:

(1) A statement referring to the operator-participant contract for further information about conditions applicable to the charter; or

(2) The full text of the operator-participant contract.

(c) Except as set forth in § 380.33a for operator's option plan contracts, if the charter prospectus names alternative dates or cities, any solicitation material that states a price per passenger shall also state that the actual dates or cities have not yet been selected, if that is the case.

(d) Any solicitation material that names a hotel but does not name every hotel named in the operator-participant contract shall also state that substitutions may be made.

(e) In any solicitation material from a direct air carrier, indirect air carrier, or an agent of either, for a charter,

14 CFR Ch. II (1-1-01 Edition)

charter tour (*i.e.*, a combination of air transportation and ground accommodations), or a charter tour component (*e.g.*, a hotel stay), any price stated for such charter, tour, or component shall be the entire price to be paid by the participants to the air carrier, or agent, for such charter, tour, or component.

§ 380.31 General requirements for operator-participant contracts.

(a) Except for telephone sales for which payment is made by credit card as described in paragraph (b) of this section, the charter operator shall not accept payment from or on behalf of a prospective participant unless the participant has agreed to the conditions of the charter by signing an operator-participant contract as described in § 380.32. If a member of a group that will travel together pays for the group, that member may sign the contract on behalf of the group.

(b) For telephone sales only, the charter operator may accept payment by credit card without the participant having first signed an operator-participant contract provided that the charter operator first advises the customer:

(1) That he or she has the right to receive the operator-participant contract before making a booking;

(2) That the operator-participant contract will be mailed to the participant within 24 hours of accepting payment by credit card; and

(3) That the operator-participant contract must be signed, and the signed portion returned to the operator, before travel.

(4) A full refund must be made of any amounts charged to a credit card for any participant who cancels before the operator-participant contract is signed.

(c) The contract form may include a space that participants may check to authorize the charter operator to retain their money while attempting to make other arrangements for them if there is no space available on the flight or on specific alternative flights they have requested.

(d) If there is no space available on the flight or specific alternative flights requested by the participant the operator shall return all the participant's money within 7 days after receiving it

unless the participant, in accordance with paragraph (c) of this section, has authorized the operator to retain the payments while the operator attempts to make other arrangements for the participant. If the operator retains the payments while attempting to make other arrangements for the participant, it shall notify the participant of the fact within 7 days after receiving the payments, but in no event later than the departure. For the purpose of the time periods in this paragraph, receipt of money by a travel agent on behalf of a charter operator will not be considered as receipt by the operator.

(e) Except as set forth in §380.33a for operator's option plan contracts, the operator-participant contract shall not specify alternative dates for the outbound or return flights, or alternative origin or destination cities for any flight leg.

(f) The contract form shall be printed in 7-point or larger type. The statements required by paragraph (a), (f), (h), (l), (r), (s), and (x) of §380.32 shall be printed so as to contrast with the rest of the contract by the use of bold-faced type, capital letters, or a type size that is at least 50 percent larger than that used for the rest of the contract.

(g) The contract form shall include a space that participants may check to indicate that they wish to be furnished details of trip cancellation, health, and accident insurance.

(h) The contract form shall be designed so as to enable participants to retain a copy of the general terms and conditions after signing it. The specific information supplied by participants (such as choices of dates, cities, or other options) need not be retainable.

§380.32 Specific requirements for operator-participant contracts.

Contracts between charter operators and charter participants shall state:

(a) The name and complete mailing address of the charter operator;

(b) The name of the direct air carrier, the dollar amounts of that carrier's liability limitations for participant's baggage, the type and capacity of the aircraft to be used for the flight, and the conditions governing aircraft-equipment substitutions;

(c) The dates of the outbound and return flights;

(d) The origin and destination cities of each flight leg;

(e) The amount and schedule of payments;

(f) If a depository agreement as provided in §380.34(b) is used: That all checks, money orders, and credit card drafts must be made payable to the escrow account at the depository bank (identifying bank)¹ or, when the charter is sold to the participant by a retail travel agent, checks and money orders may be made payable to the agent, who must in turn make his check payable to the escrow account at the depository bank;

(g) The tour itinerary, if any, including the name and location of the hotels, length of stay at each, and other ground accommodations and services that are part of the tour;

(h) That the charter operator may not cancel the charter less than 10 days before the scheduled departure date, except for circumstances that make it physically impossible to perform the charter trip;

(i) That if a charter is canceled 10 or more days before the scheduled departure date, the operator will notify the participant in writing within 7 days after the cancellation, but in any event at least 10 days before the scheduled departure;

(j) That if a charter is canceled less than 10 days before departure (*i.e.*, for circumstances that make it physically impossible to perform the charter trip), the operator will get the message to the participant as soon as possible;

(k) That if the charter is canceled, a refund will be made to the participant within 14 days after the cancellation;

(l) The right to refunds if the participant changes plans is limited;

¹If the credit card merchant account is separate from the depository account, it must be used solely as a conduit, *i.e.*, all credit card payments toward Public Charter trips must be immediately remitted to the depository account in full, without holdback, or retention of any portion of the participant's payment. If the depository bank is not the credit card merchant bank, the Department must be satisfied that there are adequate procedural safeguards for the protection of participants' payments.

§ 380.33

14 CFR Ch. II (1–1–01 Edition)

(m) The right to refunds if the participant changes plans, including

(1) The right to a full refund, for sales made by credit card, until an operator-participant contract is signed; and

(2) That any participant who wishes to cancel will receive a full refund (less any applicable administrative fee, not to exceed \$25) upon providing a substitute participant to the charter operator or its sales agent, or upon being substituted for by a participant found by the charter operator;

(n) The procedure for obtaining the refunds described in paragraph (m) of this section, including that they will be made within 14 days after the cancellation or substitution;

(o) The meaning of “major change”, as set forth in § 380.33(a);

(p) That if the charter operator knows of a major change 10 or more days before scheduled departure, the operator will notify the participant of the change within 7 days after first knowing of it, but in any event at least 10 days before scheduled departure;

(q) That is the operator first knows of a major change less than 10 days before scheduled departure, the operator will get the message to the participant as soon as possible;

(r) That within 7 days after receiving a pre-departure notification of a major change but in no event later than departure, the participant may cancel, and that a full refund will be made to the participant within 14 days after canceling;

(s) That upon a post-departure notification of a major change, the participant may reject the substituted hotel or the changed date, origin, or destination of a flight leg and be sent, within 14 days after the return date named in the contract, a refund of the portion of his payment allocable to the hotel accommodations or air transportation not provided;

(t) That the participants rights and remedies set forth in the contract, including the procedures for major changes, shall be in addition to any other rights or remedies available under applicable law, although the operator may condition a refund on the participant's waiver of additional remedies;

(u) That trip cancellation, health, and accident insurance is available and that the operator will furnish details of the insurance to participants who check the space provided for this purpose on the contract form;

(v) The name and address of the surety company or bank issuing the security agreement; and that unless the charter participant files a claim with the charter operator or, if he is unavailable, with the securer, within 60 days after termination of the charter, the securer shall be released from all liability under the security agreement to that participant. Termination means the date of arrival (or in the case of a canceled charter, the intended date or arrival) of the return flight. If there is no return flight in a participant's itinerary, termination means the date or intended date of departure of the last flight in the participant's itinerary;

(w) For international flights only: That additional restrictions may be imposed on the flight by the foreign government involved, and that if landing rights are denied by a foreign government the flight will be canceled with a full refund to the participant. This statement need not be included in the contract if—

(1) The prospectus includes a certification by the charter operator and the direct air carrier that landing rights have been obtained from all the foreign governments involved, and

(2) All the foreign governments involved have adopted country-of-origin rules for charterworthiness;

(x) That the charter operator is the principal and is responsible to the participants for all services and accommodations offered in connection with the charter. However, the contract may expressly provide that the charter operator, unless negligent, is not responsible for personal injury or property damage caused by any direct air carrier, hotel or other supplier of services in connection with the charter.

§ 380.33 Major changes in itinerary or price; refunds.

(a) For the purposes of this section, “major change” means any of the following:

(1) A change in the departure or return date shown in the operator-participant contract, (or, if the contract states alternative dates, the date designated to the participant by the charter operator in accordance with § 380.33a(b)), unless the change results from a flight delay. In any event, however, a date change that the operator knows of more than 2 days before the scheduled flight date, and any delay of more than 48 hours, will be considered a major change.

(2) A change in the origin or destination city shown in the operator-participant contract for any flight leg (or, if the contract states alternative cities, the city designated to the participant by the operator in accordance with § 380.33a(b)), unless the change affects only the order in which cities named in a tour package are visited.

(3) A substitution of any hotel that is not named in the operator-participant contract; and

(4) A price increase to the participant that occurs 10 or more days before departure and results in an aggregate price increase of more than 10 percent.

(b) The charter operator shall not increase the price to any participant less than 10 days before departure.

(c) The charter operator shall notify all participants of major changes, as required by the operator-participant contracts. This notification shall include the participants' rights to refunds required to be described in the operator-participant contract. The operator shall, if applicable, also notify the participants that the acceptance of a refund constitutes a waiver of their legal rights.

(d) Except as otherwise specified, notifications and refunds required by this part are considered made at the time they are mailed or sent by an equivalent method.

(e) The charter operator shall make all refunds required to be described in the operator-participant contract within the time limits set forth in paragraphs (k), (n), (r), and (s) of § 380.32, as applicable.

§ 380.33a Operator's option plan.

(a) For the purposes of this part, an operator's option plan contract that states alternative dates for the out-

bound or return flights, or alternative origin or destination cities for any flight leg.

(b) Operator's option plan contracts shall state, in addition to the information required by § 380.32, that the selection of the actual dates or cities, as applicable, is at the charter operator's option and will not entitle the participant to a refund, and that the operator will notify the participant of the actual dates or cities at least 10 days before the earliest of any alternative dates for the outbound flight.

(c) Contract forms for all operator's option plan contracts shall be labeled "OPERATOR'S OPTION PLAN" in bold-faced capital letters at least ¼ inch high. The statement required by paragraph (b) of this section and the statement of alternative dates (§ 380.32(c)) or alternative cities (§ 380.32(d)), as applicable, shall be printed so as to contrast with the rest of the contract, as set forth in § 380.31(f).

(d) Any solicitation material that states a price per passenger for an operator's option plan contract shall clearly and conspicuously—

(1) Identify that price as being for the operator's option plan,

(2) Name all the possible dates or cities, as applicable, and

(3) State that the selection of the actual dates or cities is at the charter operator's option.

(e) Charter operators and their agents shall not misrepresent to prospective participants, orally, in solicitation materials, or otherwise, the probability that any particular city or date will be selected from among the alternatives named in an operator's option plan contract.

(f) The charter operator shall notify all participants with operator's option plan contracts of the actual dates or cities, as applicable, as required by contracts.

§ 380.34 Security and depository agreements.

(a) Except as provided in paragraph (b) of this section, the charter operator or foreign charter operator shall furnish a security agreement in an amount for not less than the charter price for the air transportation, if only

air transportation is involved, or, if the charter involves land accommodations in addition to air transportation, a security agreement in one of the following amounts dependent upon the length of the charter or series of charters:

(1) For a charter or series of charters of 14 days or less, security in an amount of not less than the charter price for the air transportation to be furnished in connection with such charter or series of charters;

(2) For a charter or series of charters of more than 14 days but less than 28 days security in an amount of not less than twice the charter price; and

(3) For a charter or series of charters of 28 days or more, security in an amount of not less than three times the charter price: Provided, however, That the liability of the securer to any charter participant shall not exceed amounts paid by that participant to the charter operator with respect to the charter.

(b) The direct air carrier and the charter operator or foreign charter operator may elect, in lieu of furnishing a security agreement as provided under paragraph (a) of this section, to comply with the requirements of paragraphs (b)(1) and (b)(2) of this section, as follows:

(1) The charter operator shall furnish a security agreement in an amount of at least \$10,000 times the number of flights, except that the amount need not be more than \$200,000. The liability of the securer to any charter participant shall not exceed the amount paid by the participant to the charter operator for that charter.

(2) The direct air carrier and charter operator or foreign charter operator shall enter into an agreement with a designated bank, the terms of which shall provide that all payments by charter participants paid to charter operators or foreign charter operators and their retail travel agents shall be deposited with and maintained by the bank subject to the following conditions:

(i) On sales made to charter participants by charter operators or foreign charter operators the participant shall pay by check, money order, or credit

card draft payable to the bank;² on sales made to charter participants by retail travel agents, the retail travel agent may deduct his commission and remit the balance to the designated bank by check, money order, or electronic transfer: Provided, That the travel agent agrees in writing with the charter operator or foreign charter operator that if the charter is canceled the travel agent shall remit to the bank the full amount of the commission previously deducted or received within 10 days after receipt of notification of cancellation of the charter; except for the credit card company's usual commission (not to exceed 3 percent), the charter operator shall not permit any portion of a charter participant's payments by credit card to be "held back" by the credit card merchant bank;³

(ii) The bank shall pay the direct air carrier the charter price for the transportation not earlier than 60 days (including day of departure) prior to the scheduled day of departure of the originating or returning flight, upon certification of the departure date by the air carrier: Provided, That, in the case of a round trip charter contract to be performed by one carrier, the total round trip charter price shall be paid to the carrier not earlier than 60 days prior to the scheduled day of departure of the originating flight;

(iii) The bank shall reimburse the charter operator or foreign charter operator for refunds made by the latter to the charter participant upon written notification from the charter operator or foreign charter operator;

(iv) If the charter operator, foreign charter operator or the direct air carrier notifies the bank that a charter has been canceled, the bank shall make applicable refunds directly to the charter participants;

(v) After the charter price has been paid in full to the direct air carrier, the bank shall pay funds from the account

²See also n.1, *supra*.

³"Holdback" is an amount in excess of usual commissions that a credit card merchant bank sometimes retains to cover potential charge-backs or other charges.

directly to the hotels, sightseeing enterprises, or other persons or companies furnishing ground accommodations and services, if any, in connection with the charter or series of charters upon presentation to the bank of vendors' bills and upon certification by the charter operator or foreign charter operator of the amounts payable for such ground accommodations and services and the person or companies to whom payment is to be made: Provided, however, That the total amounts paid by the bank pursuant to paragraphs (b)(2) (ii) and (v) of this section shall not exceed either the total cost of the air transportation, or 80 percent of the total deposits received by the bank less any refunds made to charter participants pursuant to paragraphs (b)(2) (ii) and (iv) of this section, whichever is greater;

(vi) As used in this section, the term "bank" means a bank insured by the Federal Deposit Insurance Corporation;

(vii) The bank shall maintain a separate accounting for each charter group;

(viii) Notwithstanding any other provisions of this section, the amount of total cash deposits required to be maintained in the depository account of the bank may be reduced by one or both of the following: The amount of the security agreement in the form prescribed in this section in excess of the minimum coverage required by paragraph (b)(1) of this section; an escrow with the designated bank of Federal, State, or municipal bonds or other securities, consisting of certificates of deposit issued by banks having a stated policy of redeeming such certificates before maturity at the request of the holder (subject only to such interest penalties or other conditions as may be required by law), or negotiable securities which are publicly traded on a securities exchange, all such securities to be made payable to the escrow account: Provided, That such other securities shall be substituted in an amount no greater than 80 percent of the total market value of the escrow account at the time of such substitution: And provided, further, That should the market value of such other securities subsequently decrease, from time to time, then additional cash or securities qualified for investment

hereunder shall promptly be added to the escrow account, in an amount equal to the amount of such decreased value; and

(ix) Except as provided in paragraph (b)(2)(i), (iii), (iv), (v), and (viii) of this section, the bank shall not pay out any funds from the account prior to 2 banking days after completion of each charter, when the balance in the account shall be paid the charter operator or foreign charter operator, upon certification of the completion date by the direct air carrier: Provided, however, That if the Charter involves air transportation only and the bank has paid the direct air carrier(s) the charter price for the originating flight, and the returning flight if any, and has paid all refunds due to participants, as provided in paragraph (b)(2)(ii) and (iii), respectively, of this section, then the bank may pay the balance in the account to the charter operator upon certification by the direct air carrier performing the originating flight that such flight has in fact departed.

(c)(1) The security agreement required under paragraphs (a) and (b) of this section shall insure the financial responsibility of the charter operator or foreign charter operator and the supplying of the transportation and all other accommodations, services, and facilities in accordance with the contract between the charter operator or foreign charter operator and the charter participants.

(2) The security agreement may be either:

(i) A surety bond in the form set forth as appendix A to this part;

(ii) A surety trust agreement in the form set forth as appendix B to this part; or

(iii) An arrangement with a bank (for instance, a standby letter of credit) that provides protection of charter participants' funds equivalent to or greater than that provided by the Bond in appendix A. An arrangement that furnishes a lesser degree of protection than would be provided under the bond shall be invalid to that extent, and instead the bank, the charter operator or foreign charter operator, and the charter participants shall have the same rights and liabilities as provided under a bond in the form of appendix A. If the

§ 380.34a

14 CFR Ch. II (1–1–01 Edition)

arrangement does not give as much protection as a bond against the risk of the charter operator's bankruptcy, the bank shall be liable in the event of bankruptcy to the same extent as if it had entered into a bond.

(3) Any agreement under paragraph (c)(2)(iii) of this section shall include a statement that, in the event that the other provisions of the agreement do not provide protection to charter participants comparable to that provided under a bond in the form of appendix A, the bank shall assume, for the benefit of the charter participants, all the liabilities it would have if it entered into the bond.

(4) The security agreement shall be effective on or before the date the charter prospectus is filed with the Department.

(5) The security agreement shall be specifically identified by the issuing securer with a numbering system so that the Department can identify the security agreement with the specific charter or charters to which it relates. These data may be set forth in an addendum attached to the security agreement, which addendum must be signed by the charter operator or foreign charter operator and the securer.

(6) When security is provided by a surety bond, such bond shall be issued by a bonding or surety company that is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. The bonding or surety company shall be one legally authorized to issue bonds of that type in the State in which the charter originates. For purposes of this section the term "State" includes any territory or possession of the United States, or the District of Columbia.

(7) When security is provided by a security agreement other than a bond, the agreement shall be issued by a national bank complying with the provisions of 12 CFR 7.7010(a), or by a State bank complying with applicable State laws that give authority to issue such agreements, and all such banks must be insured by the Federal Deposit Insurance Corporation.

(d) The security agreement required by this section shall provide that unless the charter participant files a claim with the charter operator or for-

eign charter operator, or, if it is unavailable, with the securer, within 60 days after termination of the charter, the securer shall be released from all liability under the security agreement to such charter participant. Termination means the date of arrival (or in the case of a canceled charter, the intended date of arrival) of the return flight. If there is no return flight in a participant's itinerary, termination means the date or intended date of departure of the last flight in the participant's itinerary.

§ 380.34a Substitution of direct air carrier's security or depository agreement.

(a) A direct air carrier may substitute its own security agreement and/or depository arrangements, as specified in this section, for those required of the charter operator under § 380.34, but only for charter trips in which all the air transportation is provided by one direct air carrier. Charter operators are relieved from § 380.34 to the extent that the direct carrier substitutes its own arrangements.

(b) The direct air carrier may substitute its security agreement for all of the arrangements required of the charter operator under § 380.34 (a) or (b). Alternatively, it may substitute its depository agreement for the depository agreement required of the charter operator under § 380.34(b)(2). If the direct carrier substitutes its depository agreement, it may also obtain and substitute a security agreement for the one otherwise required of the charter operator under § 380.34(b)(1). If the direct carrier substitutes its depository agreement only, the charter operator must supply the security agreement required under § 380.34(b)(1).

(c) If the direct carrier substitutes a security agreement for all the charter operator's requirements under § 380.34, the charter operator shall include in the charter prospectus, in place of the information in § 380.28(a)(2) regarding the charter operator's security agreement:

(1) A statement by the direct air carrier on OST Form 4535 that it will take responsibility for all charter participant payments (including those for ground accommodations and services)

and for the fulfillment of all the charter operator's contractual and regulatory obligations to the charter participants.

(2) A statement from the direct air carrier and its securer (under §212.12 of this chapter), OST Form 4533, that they have entered into a security agreement assuring the direct air carrier's responsibilities to charter participants under this section in an unlimited amount (except that the liability of the securer with respect to any charter participant may be limited to the charter price paid by or on behalf of such participant), and that the securer has received a copy of the proposed flight schedule identified by the schedule number assigned by the charter operator under this part.

(d) A substitute depository agreement under this section shall be signed by the direct air carrier, the charter operator, and the depository bank, and shall provide, in addition to existing requirements under §212.8 of this chapter, that:

(1) Payments by or on behalf of charter participants shall be allocated to the flight accounts matching the participant's itinerary in the following way: Each account shall have allocated to it the charter cost of the participant's air transportation on that flight. The portion of each payment not intended for air transportation services shall be allocated to the account for the return flight in the participant's itinerary. If there is only one flight in the itinerary, the entire payment shall be allocated to that account.

(2) The bank shall pay funds from a flight account directly to the hotels, sightseeing enterprises, or other persons or companies furnishing ground accommodations and services, if any, in connection with the charter flight, upon presentation to the bank of vendor's bills and upon certification by the person who contracted for the ground accommodations or services of the amounts payable and the persons or companies to whom payment is to be made, except that no disbursement shall be made that would reduce the balance in the account below the charter cost of the flight.

(3) On sales made to participants by a person other than a retail travel agent, the participant shall pay by check, money order, or credit card draft payable to the bank. On sales made to participants by a retail travel agent, payments shall be made in the same manner unless the agent deducts its commission and remits the balance to the bank by check, money order, or electronic transfer. The agent may deduct its commission only if it agrees in writing with its principal (the charter operator or direct air carrier, as applicable) that, if the charter is canceled, the agent shall remit to the bank the full amount of the commission previously deducted or received within 10 days after receipt of notification of the cancellation. The depository bank shall pay refunds directly to participants according to the terms of the operator-participant contract and the terms of this part.

(e) If the direct carrier substitutes a security agreement in addition to substituting a depository agreement, the charter prospectus information must include all the information required by paragraphs (c) and (d) of this section, except for the amount of the security agreement. That agreement shall be in an amount of at least \$10,000 times the number of flights, except that the amount need not be more than \$200,000.

(f) A copy of the depository agreement under paragraph (d) of this section shall be filed with the Department, and it shall not be effective until approved by the Department.

(g) A copy of the security agreement under paragraph (c) or paragraph (e) of this section shall be filed with the Department. It shall insure the financial responsibility of the direct air carrier for supplying the transportation and all other accommodations, services, and facilities in accordance with the contracts between the charter operator and the charter participants. Such security agreement shall meet all the other requirements of §380.34 (c) and (d).

§380.35 Disbursements from depository account.

No charter operator or direct air carrier shall cause its agents or the depository bank to make disbursements or

§ 380.36

payments from deposits except in accordance with the provisions of this part.

§ 380.36 Record retention.

Every charter operator conducting a charter pursuant to this part shall comply with the applicable record-retention provisions of part 249 of this chapter.

Subpart D—Requirements Applicable to Direct Air Carriers

§ 380.40 Charter not to be performed unless in compliance with this part 380.

(a) For all Public Charters other than foreign-originating charters organized by foreign charter operators: A direct air carrier shall not perform air transportation in connection with such a charter unless it has made a reasonable effort to verify that all provisions of this part have been complied with and that the charter operator's authority under this part has not been suspended by the Department.

(b) For foreign-originating Public Charters organized by foreign charter operators: A direct air carrier shall not perform air transportation in connection with such a charter unless—

(1) The charter is conducted in accordance with subpart B of this part and

(2) The charter operator conforms to all requirements of this part that are applicable to charter operators within the Department's jurisdiction, other than §§ 380.25, 380.28, 380.30 through 380.36, and 380.50.

§§ 380.41–380.42 [Reserved]

§ 380.43 Cancellations by direct air carriers.

The direct air carrier shall not cancel any charter under this part less than 10 days before the scheduled departure date, except for circumstances that make it physically impossible to perform the charter trip.

§ 380.45 Suspension of exemption authority.

The Department reserves the power to suspend the exemption authority of any air carrier, without hearing, if it

14 CFR Ch. II (1–1–01 Edition)

finds that such action is necessary in order to protect the rights of the traveling public.

§ 380.46 Charter trip reporting.

The direct air carrier shall promptly notify the Office of Aviation Analysis, Special Authorities Division, regarding any charters covered by a prospectus filed under § 380.28 that are later canceled.

Subpart E—Registration of Foreign Charter Operators

§ 380.60 Purpose.

This subpart establishes registration procedures for foreign charter operators intending to engage in the formation of groups for transportation on Public Charters that originate in the United States.

§ 380.61 Operation by foreign charter operators.

(a) Each foreign charter operator shall be registered under this subpart and file a prospectus under § 380.25 before organizing groups for transportation on Public Charters that originate in the United States.

(b) Each foreign charter registered under this subpart shall comply with the other provisions of this part directed to charter operators.

§ 380.62 Registration applications.

(a) To be registered under this subpart, a foreign charter operator shall file two copies of an application for registration with the Office of Aviation Analysis, Special Authorities Division. The Department will list the names and nationalities of all persons applying for registration in its Weekly Summary of Filings.

(b) The application shall be made on OST Form 4530, which can be obtained from the Office of Aviation Analysis, Special Authorities Division.

(c) The applicant shall clearly indicate in its application for registration whether it requests authority to engage in foreign and/or interstate air transportation.

§ 380.63 Objections to registration applications.

Any person objecting to the registration application of a foreign charter operator or to a proposed change in the name or ownership of that operator shall file an objection with the Office of Aviation Analysis, Special Authorities Division, within 28 days after the Department receives the properly completed registration application.

§ 380.64 Department action on a registration application.

(a) After a registration is received, one of the following actions will be taken.

(1) The application will be approved by the stamping of the effective date of registration on OST Form 4530 and returning the duplicate copy of the form to the operator;

(2) Additional information will be requested for the applicant;

(3) The applicant will be notified that its application will require further analysis or procedures, or is being referred to the Department for formal action;

(4) The registration application will be rejected if it does not comply with the filing requirements of this subpart;

(5) The application will be approved subject to such terms, conditions, or limitations as may be required by the public interest; or

(6) The registration application will be rejected for reasons relating to the failure of effective reciprocity or if the Department finds that it would be in the public interest to do so.

(b) One of the actions described in paragraph (a) of this section will normally be taken within 60 days after the registration application is received. The Department will also consider requests for faster action that include a full explanation of the need for expedited action.

§ 380.65 Notification of change of operations or ownership.

(a) Not later than 30 days before any change in its name or address or before a temporary or permanent cessation of operations, each foreign charter operator registered under this subpart shall notify the Office of Aviation Analysis, Special Authorities Division, of the

change by resubmitting OST Form 4530.

(b) A foreign charter operator registered under this subpart shall apply for an amendment to that registration not later than 30 days after either of the following events:

(1) A person listed on its existing registration as owning or holding beneficial interest in at least 10 percent of the operator or of the operator's stock reduces its holding to below 10 percent;

(2) A person not listed on the existing registration as owning or holding beneficial interest in at least 10 percent of the operator or of the operator's stock becomes an owner or holder of 10 percent or more of the company or of its stock.

(c) An application for an amendment shall be made by resubmitting OST Form 4530. The existing registration shall remain valid pending Department action on the amendment.

§ 380.66 Cancellation or conditioning of the registration.

The registration of a foreign charter operator may be canceled or subjected to additional terms, conditions, or limitations if any of the following occur:

(a) The operator files a written notice with the Department that it is discontinuing its charter operations;

(b) A substantial ownership interest is acquired by persons who are not citizens of the same country as the registrant; or

(c) The Department finds, after notice and an opportunity for responses, that it is in the public interest to do so. In making this finding, the Department will consider whether effective reciprocity exists between the United States and the government of the foreign charter operator.

§ 380.67 Waiver of sovereign immunity.

By accepting an approved registration form under this subpart, an operator waives any right it may have to assert any defense of sovereign immunity from suit in any proceeding against it, in any court or other tribunal of the United States, that is based upon a claim arising out of operations by the operator under this part.

APPENDIX A TO PART 380—PUBLIC CHARTER OPERATOR'S SURETY BOND UNDER PART 380 OF THE SPECIAL REGULATIONS OF THE DEPARTMENT OF TRANSPORTATION (14 CFR PART 380)

Know all men by these presents, that we _____ (name of charter operator) of _____ (city) _____ (state or country) as Principal (hereinafter called Principal), and _____ (name of surety) a corporation created and existing under the laws of the State of _____ (State) as Surety (hereinafter called Surety) are held and firmly bound unto the United States of America in the sum of \$ _____ (see §380.34(f) of Part 380) for which payment, well and truly to be made, we bind ourselves and our heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

Whereas Principal intends to become a Public Charter operator pursuant to the provisions of part 380 of the Department's Special Regulations and other rules and regulations of the Department relating to insurance or other security for the protection of charter participants, and has elected to file with the Department of Transportation such a bond as will insure financial responsibility with respect to all moneys received from charter participants for services in connection with a Public Charter to be operated subject to Part 380 of the Department's Special Regulations in accordance with contracts, agreements, or arrangements therefor, and

Whereas this bond is written to assure compliance by Principal as an authorized charter operator with Part 380 of the Department's Special Regulations, and other rules and regulations of the Department relating to insurance and other security for the protection of charter participants, and shall inure to the benefit of any and all charter participants to whom Principal may be held legally liable for any damages herein described.

Now, therefor, the condition of this obligation is such that if Principal shall pay or cause to be paid to charter participants any sum or sums for which Principal may be held legally liable by reason of Principal's failure faithfully to perform, fulfill and carry out all contracts, agreements, and arrangements made by Principal while this bond is in effect with respect to the receipt of moneys from charter participants, and proper disbursement thereof pursuant to and in accordance with the provisions of Part 380 of the Department's Special Regulations, then this obligation shall be void, otherwise to remain in full force and effect.

The liability of Surety with respect to any charter participant shall not exceed the charter price paid by or on behalf of such participant.

The liability of Surety shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments shall amount in the aggregate to the penalty of the bond, but in no event shall Surety's obligation hereunder exceed the amount of said penalty.

Surety agrees to furnish written notice to the Office of Aviation Analysis, Department of Transportation, forthwith of all suits or claims filed and judgments rendered, and payments made by Surety under this bond.

The bond shall cover the following charters:¹

Surety company's bond No. _____

Date of flight departure _____

Place of flight departure _____

This bond is effective on the _____ day of _____, 12:01 a.m., standard time at the address of Principal as stated herein and as hereinafter provided. Principal or Surety may at any time terminate this bond by written notice to: "Special Authorities Division (P-57), Office of Aviation Analysis, U.S. Department of Transportation, Washington, DC 20590," such termination to become effective thirty (30) days after the actual receipt of said notice by the Department. Surety shall not be liable hereunder for the payment of any damages hereinbefore described which arise as a result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation and other services made by Principal after the termination of this bond as herein provided, but such termination shall not affect the liability of the bond hereunder for the payment of any damages arising as a result of contracts, agreements, or arrangements for the supplying of transportation and other services made by Principal prior to the date that such termination becomes effective. Liability of Surety under this bond shall in all events be limited only to a charter participant or charter participants who shall within sixty (60) days after the termination of the particular charter described herein give written notice of claim to the charter operator or, if it is unavailable, to Surety, and all liability on this bond shall automatically terminate sixty (60) days after the termination date of each particular charter covered by this bond except for claims made in the time provided herein.

In witness whereof, the said Principal and Surety have executed this instrument on the _____ day of _____, _____.

¹These data may be supplied in addendum attached to the bond.

Office of the Secretary, DOT

Pt. 380, App. B

Principal

Name _____

By: Signature and title _____

Surety

Name _____

By: Signature and title _____

Only corporations may qualify to act as surety and they must meet the requirements set forth in §380.34(c)(6) of Part 380.

APPENDIX B TO PART 380—PUBLIC
CHARTER SURETY TRUST AGREEMENT

This Trust Agreement is entered into between _____ (charter operator) incorporated under the law of _____ with the principal place of business being _____ (hereinafter referred to as the Operator), and _____ (Bank) with its principal place of business being _____ (hereinafter referred to as the "Trustee"), for the purpose of creating a trust to become effective as of the _____ day of _____, which trust shall continue until terminated as hereinafter provided.

The Operator intends to become a Public Charter operator pursuant to the provisions of Part 380 of the Department's Special Regulations and other rules and regulations of the Department relating to insurance or other security for the protection of charter participants, and has elected to file with the Department of Transportation such a Surety Trust Agreements as will insure financial responsibility with respect to all moneys received from charter participants for services in connection with a Public Charter to be operated subject to Part 380 of the Department's Special Regulations in accordance with contracts, agreements, or arrangements therefor.

This Surety Trust Agreement is written to assure compliance by the Operator with the provisions of Part 380 of the Department's Special Regulations and other rules and regulations of the Department relating to insurance or other security for the protection of charter participants.

It shall inure to the benefit of any and all charter participants to whom the Operator may be held legally liable for any of the damages herein described.

It is mutually agreed by and between the operator and Trustee that the Trustee shall manage the corpus of the trust and carry out the purposes of the trust as hereinafter set forth during the term of the trust for the benefit of charter participants (who are hereinafter referred to as "Beneficiaries.")

Beneficiaries of the trust created by this Agreement shall be limited to those charter participants who meet the following requirements:

1. Those for whom Operator or Operator's agent has received payment toward participation in one or more charters operated by or proposed to be operated by Operator.

2. Who have legal claim or claims for money damages against the Operator by reason of the Operators' failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Operator while this trust is in respect to the receipt of moneys and proper disbursement thereof pursuant to Part 380 of the Department's Special Regulations; and

3. Who have given notice of such claim or claims in accordance with this Trust Agreement, but who have not been paid by the Operator.

The Operator shall convey to the Trustee legal title to the trust corpus, which has a value of \$ _____ by the time of the execution of this Agreement.

Trustee shall assume the responsibilities of the Trustee over the said trust corpus and shall distribute from the trust corpus to any and all Beneficiaries to whom the Operator, in its capacity as a Public Charter operator, may be held legally liable by reason of the Operator's failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Operator, while this trust is in effect with respect to the receipt of moneys and proper disbursement thereof pursuant to Part 380 of the Department's Special Regulations in connection with said charters, such damages as will discharge such liability while this trust is in effect; Provided, however, That the liability of the trust to any Beneficiary shall not exceed the charter price (as defined in Part 380 of the Department's Special Regulations) paid by or on behalf of any such Beneficiary; Provided, further, That there shall be no obligation of the trust to any Beneficiary if the Operator shall pay or cause to be paid to any Beneficiary any sum or sums for which the Operator may be held legally liable by reasons of its failure faithfully to perform, fulfill, and carry out all contracts, agreements, and arrangements made by the Operator in its capacity as charter operator while this trust is in effect with respect to the receipt of moneys and proper disbursement thereof pursuant to Part 380 of the Department's Special Regulations; And provided still further, That the liability of the trust as administered by the Trustee shall not be discharged by any payment or succession of payments hereunder, unless and until such payment or payments, shall amount in the aggregate to \$ _____. Notwithstanding anything herein to the contrary, in no event shall the obligation of the trust or the Trustee hereunder exceed the aggregate amount of \$ _____.

The Trustee agrees to furnish written notice to the Office of Aviation Analysis, Department of Transportation, forthwith of all

Pt. 381

14 CFR Ch. II (1–1–01 Edition)

suits of claims filed and judgments rendered (of which it has knowledge), and of payments made by the Trustee under the terms of this trust.

The Trust shall not be liable hereunder for the payment of any damages hereinbefore described which arise as a result of any contracts, agreements, undertakings, or arrangements for the supplying of transportation and other services made by the Operator after the termination of this trust as herein provided, but such termination shall not affect the liability of the trust hereunder for the payment of any damages arising as a result of contracts, agreements, or arrangements for the supplying of transportation and other services made by the Operator prior to the date that such termination becomes effective.

Liability of the trust shall in all events be limited only to a Beneficiary or Beneficiaries who shall within sixty days after the termination of the particular charter give written notice of claim to the Operator or, if it is unavailable, to the Trustee, and all liability of the trust with respect to participants in a charter shall automatically terminate sixty days after the termination date of each particular charter covered by this trust except for claims filed in the time provided herein. Sixty-one days after the completion of the last charter covered by this Trust Agreement, the trust shall automatically terminate except for claims of any Beneficiary or Beneficiaries previously made in accordance with this Agreement still pending on and after said sixty-first day. To the extent of such claims, the trust shall continue until those claims are discharged, dismissed, dropped, or otherwise terminated; the remainder of the trust corpus shall be conveyed forthwith to the Operator. After all remaining claims which are covered by this Trust Agreement pending on and after the said sixty-first day have been discharged, dismissed, dropped, or otherwise terminated, the Trustee shall convey forthwith the remainder of the trust corpus, if any, to the Operator.

Either the Operator or Trustee may at any time terminate this trust by written notice to: "Special Authorities Division (P-57), Office of Aviation Analysis, U.S. Department of Transportation, Washington, DC 20590," such termination to become effective thirty days after the actual receipt of said notice by the Department.

In the event of any controversy or claim arising hereunder, the Trustee shall not be required to determine same or take any other action with respect thereto, but may await the settlement of such controversy or claim by final appropriate legal proceedings, and in such event shall not be liable for interest or damages of any kind.

Any Successor to the Trustee by merger, consolidation, or otherwise, shall succeed to

this trusteeship and shall have the powers and obligations set forth in this Agreement.

The trust created under this Agreement shall be operated and administered under the laws of the State of _____.

IN WITNESS WHEREOF, the Operator and Trustee have executed this instrument on the _____ day of _____, _____.

Trustee

Name _____

By: Signature and title _____

Charter Operator

Name _____

By: Signature and title _____

PART 381—SPECIAL EVENT TOURS

Sec.

381.1 Purpose.

381.3 Applicability.

381.5 Definition.

381.7 Advertising.

381.9 Sales.

381.11 Refunds.

381.13 Price increases.

AUTHORITY: 49 U.S.C. 40113(a) and 41712.

SOURCE: Docket No. 49385, 59 FR 61514, Nov. 30, 1994, unless otherwise noted.

§ 381.1 Purpose.

The purpose of this part is ensure that air travelers who have purchased tours to special events will receive the promised admission to the event. This part expands the "Super Bowl rule" to other events.

§ 381.3 Applicability.

This part applies to Special Event Tours that are in interstate air transportation, or in foreign air transportation originating at a point in the United States. This part applies to U.S. and foreign operators of Special Event Tours, whether they be air carriers or ticket agents. This part applies to scheduled, charter, and other air transportation.

§ 381.5 Definition.

Special Event Tour means a tour that is organized for the purpose of attending a sporting, social, religious, educational, cultural, political or other event of a special nature and limited duration, which exists for reasons apart from the tour itself, and which is represented by the operator of the tour

Office of the Secretary, DOT

§ 381.11

as including admission to that event. Examples of such events include, but are not limited to, college and professional sporting events, the Olympics, concerts, the Passion Play in Oberammergau, etc.

§ 381.7 Advertising.

No operator of a Special Event Tour or agent of such an operator shall conduct, or cause or allow to be conducted, any advertising, solicitation or other promotion for a Special Event Tour unless:

(a) The operator is in physical possession of enough tickets for admission to the event to provide such tickets for a substantial number of seats on the tour; or

(b) The operator has entered into a written contract with an organization that is the distributor of such tickets or an organization that receives such tickets directly from the distributor (e.g., a bowl committee; football conference, league or team; concert promoter or arena; etc.), the terms of which provide for that organization to furnish the operator enough admission tickets to provide such tickets for a substantial number of seats on the tour; or

(c) The operator has entered into a written contract with another person or organization that has a written contract or series of written contracts with the distributor of such tickets or with an organization that receives such tickets directly from the distributor, the terms of which provide for that organization (the organization with which the operator has contracted) to furnish the operator enough admission tickets to provide such tickets for a substantial number of seats on the tour.

§ 381.9 Sales.

(a) Except as provided in paragraph (b) of this section:

(1) No operator of a Special Event Tour shall accept money for a seat on a Special Event Tour, or authorize an agent to accept such money, unless the operator has physical possession of, or written contracts (in the manner described in § 381.7) for, a ticket for admission to the event for that individual. To the extent that the operator

receives an unsolicited booking for which the operator does not have physical possession of or written contracts for a ticket for admission to the event, any payment accompanying that booking must be returned within 3 business days.

(2) Upon acceptance of the money for a sale, the operator must reserve one event ticket for that individual. An operator may not sell more seats on the tour than it has event tickets in hand or under contract. (An operator need not continue to reserve an event ticket for an individual who withdraws from the tour by providing notice to the operator or by being notified by the operator that the individual's participation has been canceled due to failure to remit a required installment payment.)

(b) An operator of a Special Event Tour may accept a booking and payment from an individual for whom the operator does not have an event ticket in hand or under contract if that individual agrees in writing that he or she understands that no event ticket has been reserved for him or her. This agreement shall specify whether the person has agreed to participate in the tour without an event ticket and/or the operator has agreed to attempt to acquire an event ticket for this person. If the two parties agree that the operator will attempt to acquire an event ticket, the agreement shall specify any penalties that will apply if the individual later cancels because an event ticket did not become available. If the operator notifies this person that an event ticket has become available, that person shall enjoy all the other protections of this part from that time.

§ 381.11 Refunds.

If promised admission to the primary event for which a Special Event Tour was organized is not furnished by the tour operator, at the tour price agreed to before departure (including any increases that the participant has accepted pursuant to § 381.13(a)), the operator must provide each tour participant affected in this way a refund of the total tour price. This refund is to be provided within 14 calendar days after the scheduled return date of the tour.

§ 381.13

§ 381.13 Price increases.

(a) Should the tour operator increase a participant's tour price by more than 10 percent (aggregate of all increases to that participant), that participant shall have the option of canceling his or her participation in the tour and receiving a full refund within 14 days after the cancellation.

(b) The tour operator shall not increase the tour price to any participant less than ten days before departure.

PART 382—NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

Subpart A—General Provisions

- 382.1 Purpose.
- 382.3 Applicability.
- 382.5 Definitions.
- 382.7 General prohibition of discrimination.
- 382.9 Assurances from contractors.
- 382.11–382.19 [Reserved]

Subpart B—Requirements Concerning Facilities

- 382.21 Aircraft accessibility.
- 382.23 Airport facilities.
- 382.25–382.29 [Reserved]

Subpart C—Requirements for Services

- 382.31 Refusal of transportation.
- 382.33 Advance notice requirements.
- 382.35 Attendants.
- 382.37 Seat assignments.
- 382.38 Seating accommodations.
- 382.39 Provision of services and equipment.
- 382.40 Boarding assistance for small aircraft.
- 382.41 Stowage of personal equipment.
- 382.43 Treatment of mobility aids and assistive devices.
- 382.45 Passenger information.
- 382.47 Accommodations for persons with hearing impairments.
- 382.49 Security screening of passengers.
- 382.51 Communicable diseases.
- 382.53 Medical certificates.
- 382.55 Miscellaneous provisions.
- 382.57 Charges for accommodations prohibited.
- 382.59 [Reserved]

Subpart D—Administrative Provisions

- 382.61 Training.
- 382.63 Carrier programs.
- 382.65 Compliance procedures.

AUTHORITY: 49 U.S.C. 41702, 47105, and 4712.

14 CFR Ch. II (1–1–01 Edition)

SOURCE: 55 FR 8046, Mar. 6, 1990, unless otherwise noted:

EDITORIAL NOTE: Nomenclature changes to part 382 appear at Amdt. 6, 61 FR 56422, Nov. 1, 1996.

Subpart A—General Provisions

§ 382.1 Purpose.

The purpose of this part is to implement the Air Carrier Access Act of 1986 (49 U.S.C. 1374(c)), which provides that no air carrier may discriminate against any otherwise qualified individual with a disability, by reason of such disability, in the provision of air transportation.

§ 382.3 Applicability.

(a) Except as provided in this section, this part applies to all air carriers providing air transportation.

(b) Sections 382.21–382.63 do not apply to indirect air carriers.

(c) This part does not apply to foreign air carriers or to airport facilities outside the United States, its territories, possessions, and commonwealths.

(d) Nothing in this part shall authorize or require a carrier to fail to comply with any applicable FAA safety regulation.

(e) The compliance date for the following provisions of this part is June 4, 1990:

- § 382.7 (b)
- § 382.21(c)
- § 382.31(e)
- § 382.33(f)
- § 382.35 (d), (e)
- § 382.37 (b), (c)
- § 382.39 (a) (second sentence of introductory language); (a)(1) and (a)(2), with respect to acquisition of equipment; (a)(3); (b)(3); (b)(4)
- § 382.41 (d), (e)(2), (f)
- § 382.45 (a), (c)
- § 382.47(a)
- § 382.49 (b), (c)
- § 382.65 (a), (b)(2).

(f) The compliance date for the following provisions of this part is August 5, 1990:

- § 382.9
- § 382.23(e)
- § 382.33(d)
- § 382.51
- § 382.53(c).

(g) The compliance date for the following provisions for this part is October 5, 1990:

§ 382.35 (b)(2), (b)(3)

§ 382.41(g), with respect to the acceptance and stowage of batteries requiring hazardous materials packaging, for carriers which, as of March 6, 1990, had a policy of carrying no hazardous materials.

[55 FR 8046, Mar. 6, 1990, as amended at 55 FR 12341, Apr. 3, 1990; 55 FR 23544, June 11, 1990]

§ 382.5 Definitions.

As used in this part—

Air Carrier or *carrier* means any citizen of the United States who undertakes, whether directly or indirectly or by a lease or any other arrangement, to engage in air transportation.

Air carrier airport means a public, commercial service airport which empalanes annually 2,500 or more passengers and receives scheduled air service.

Air transportation means interstate, overseas, or foreign air transportation, or the transportation of mail by aircraft, as defined in the Federal Aviation Act.

Department or *DOT* means the United States Department of Transportation.

FAA means the Federal Aviation Administration, an operating administration of the Department.

Facility means all or any portion of aircraft, buildings, structures, equipment, roads, walks, parking lots, and any other real or personal property, normally used by passengers or prospective passengers visiting or using the airport, to the extent the carrier exercises control over the selection, design, construction, or alteration of the property.

Individual with a disability means any individual who has a physical or mental impairment that, on a permanent or temporary basis, substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(a) *Physical or mental impairment* means:

(1) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense

organs, respiratory including speech organs, cardio-vascular, reproductive, digestive, genito-urinary, hemic and lymphatic, skin, and endocrine; or

(2) Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities.

The term *physical or mental impairment* includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech, and hearing impairments; cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addiction, and alcoholism.

(b) *Major life activities* means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(c) *Has a record of such impairment* means has a history of, or has been classified, or misclassified, as having a mental or physical impairment that substantially limits one or more major life activities.

(d) *Is regarded as having an impairment* means:

(1) Has a physical or mental impairment that does not substantially limit major life activities but that is treated by an air carrier as constituting such a limitation;

(2) Has a physical or mental impairment that substantially limits a major life activity only as a result of the attitudes of others toward such an impairment; or

(3) Has none of the impairments set forth in this definition but is treated by an air carrier as having such an impairment.

Indirect air carrier means a person not directly involved in the operation of an aircraft who sells air transportation services to the general public other than as an authorized agent of an air carrier.

Qualified individual with a disability means a individual with a disability who—

(a) With respect to accompanying or meeting a traveler, use of ground transportation, using terminal facilities, or obtaining information about schedules, fares or policies, takes those

§ 382.7

actions necessary to avail himself or herself of facilities or services offered by an air carrier to the general public, with reasonable accommodations, as needed, provided by the carrier;

(b) With respect to obtaining a ticket for air transportation on an air carrier, offers, or makes a good faith attempt to offer, to purchase or otherwise validly to obtain such a ticket;

(c) With respect to obtaining air transportation, or other services or accommodations required by this part:

(1) Purchases or possesses a valid ticket for air transportation on an air carrier and presents himself or herself at the airport for the purpose of traveling on the flight for which the ticket has been purchased or obtained; and

(2) Meets reasonable, nondiscriminatory contract of carriage requirements applicable to all passengers;

Schedule air service means any flight scheduled in the current edition of the *Official Airline Guide*, the carrier's published schedule, or the computer reservation system used by the carrier.

§ 382.7 General prohibition of discrimination.

(a) A carrier shall not, directly or through contractual, licensing, or other arrangements:

(1) Discriminate against any otherwise qualified individual with a disability, by reason of such disability, in the provision of air transportation;

(2) Require a handicapped person to accept special services (including, but not limited to, preboarding) not requested by the passenger;

(3) Exclude a qualified individual with a disability from or deny the person the benefit of any air transportation or related services that are available to other persons, even if there are separate or different services available for handicapped persons except when specifically permitted by another section of this part; or,

(4) Take any action adverse to an individual because of the individual's assertion, on his or her own behalf or through or behalf of others, of rights protected by this part or the Air Carrier Access Act.

(b) If an indirect air carrier provides facilities or services for passengers that are covered for other carriers by

14 CFR Ch. II (1–1–01 Edition)

sections §§382.21–382.55, the indirect air carrier shall do so in a manner consistent with those sections.

(c) Carriers shall, in addition to meeting the other requirements of this part, modify policies, practices, and facilities as needed to ensure non-discrimination, consistent with the standards of section 504 of the Rehabilitation Act, as amended. Carriers are not required to make modifications that would constitute an undue burden or would fundamentally alter their program.

[55 FR 8046, Mar. 6, 1990, as amended by Doc. No. OST-96-1880, 63 FR 10535, Mar. 4, 1998; 65 FR 352, Jan. 5, 2000]

§ 382.9 Assurances from contractors.

Carriers' contracts with contractors who provide services to passengers, including carriers' agreements of appointment with travel agents (excluding travel agents who are not U.S. citizens who provide services to air carriers outside the United States, its territories and commonwealths), shall include a clause assuring:

(a) Nondiscrimination on the basis of disability, consistent with this part, by such contractors in activities performed on behalf of the carriers; and

(b) That contractor employers will comply with directives issued by carrier complaints resolution officials (CROs) under § 382.67.

§§ 382.11–382.19 [Reserved]

Subpart B—Requirements Concerning Facilities

§ 382.21 Aircraft accessibility.

(a) The following requirements apply to new aircraft operated under 14 CFR part 121 and ordered by the carrier after the effective date of this part or delivered to the carrier more than two years after the effective date of this part:

(1)(i) Aircraft with 30 or more passenger seats on which passenger aisle seats have armrests shall have movable aisle armrests on at least one-half of passenger aisle seats.

(ii) Such armrests are not required to be provided on aisle seats on which a movable armrest is not feasible or aisle

seats which a passenger with a mobility impairment is precluded from using by an FAA safety rule.

(iii) For aircraft equipped with movable aisle armrests as required by this paragraph, carriers shall configure cabins, or establish administrative systems, to ensure that an individuals with mobility impairments or other handicapped persons can readily obtain seating in rows with movable aisle armrests.

(2) Aircraft with 100 or more passenger seats shall have a priority space in the cabin designated for stowage of at least one folding wheelchair;

(3) Aircraft with more than one aisle in which lavatories are provided shall include at least one accessible lavatory. This lavatory shall permit a qualified individual with a disability to enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's on-board wheelchair. The accessible lavatory shall afford privacy to persons using the on-board wheelchair equivalent to that afforded ambulatory users. The lavatory shall provide door locks, accessible call buttons, grab bars, faucets and other controls, and dispensers usable by qualified individuals with a disability, including wheelchair users and persons with manual impairments;

(4)(i) Aircraft with more than 60 passenger seats having an accessible lavatory, whether or not required to have such a lavatory by paragraph (a)(3) of this section, shall be equipped with an operable on-board wheelchair for the use of passengers.

(ii) The carrier shall ensure that an operable on-board wheelchair is provided for a flight using an aircraft with more than 60 passenger seats on the request (with advance notice as provided in § 382.33(b)(8)) of a qualified individual with a disability who represents to the carrier that he or she is able to use an inaccessible lavatory but is unable to reach the lavatory from a seat without the use of an on-board wheelchair.

(iii) On-board wheelchairs shall include footrests, armrests which are movable or removable, adequate occupant restraint systems, a backrest height that permits assistance to passengers in transferring, structurally sound handles for maneuvering the oc-

cupied chair, and wheel locks or another adequate means to prevent chair movement during transfer or turbulence. The chair shall be designed to be compatible with the maneuvering space, aisle width, and seat height of the aircraft on which it is to be used, and to be easily pushed, pulled, and turned in the cabin environment by carrier personnel.

(b)(1) Except as provided in paragraph (b)(2) of this section, aircraft in service on the effective date of this part shall not be required to be retrofitted for the sole purpose of enhancing accessibility.

(2) Each carrier, within two years of the effective date of this part, shall comply with the provisions of paragraph (a)(4) of this section with respect to all aircraft with more than 60 passenger seats operated under 14 CFR part 121.

(c) Whenever an aircraft operated under 14 CFR part 121 which does not have the accessibility features set forth in paragraph (a) of this section undergoes replacement of cabin interior elements or lavatories, or the replacement of existing seats with newly manufactured seats, the carrier shall meet the requirements of paragraph (a) of this section with respect to the affected feature(s) of the aircraft.

(d) Aircraft operated under 14 CFR part 121 with fewer than 30 passenger seats (with respect to the requirements of paragraph (a)(1) of this section), fewer than 100 passenger seats (with respect to the requirements of paragraph (a)(2) of this section) or 60 or fewer passenger seats (with respect to the requirements of paragraph (a)(4) of this section), and aircraft operated under 14 CFR part 135, shall comply with the requirements of this section to the extent not inconsistent with structural, weight and balance, operational and interior configuration limitations.

(e) Any replacement or refurbishing of the aircraft cabin shall not reduce existing accessibility to a level below that specified in this part.

(f) Carriers shall maintain aircraft accessibility features in proper working order.

§ 382.23 Airport facilities.

(a) This section applies to all terminal facilities and services owned, leased, or operated on any basis by an air carrier at a commercial service airport, including parking and ground transportation facilities.

(b) Air carriers shall ensure that the terminal facilities and services subject to this section shall be readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs. Air carriers shall be deemed to comply with this Air Carrier Access Act obligation if they meet requirements applying to places of public accommodation under Department of Justice (DOJ) regulations implementing Title III of the Americans with Disabilities Act (ADA).

(c) The carrier shall ensure that there is an accessible path between the gate and the area from which aircraft are boarded.

(d) Systems of inter-terminal transportation, including, but not limited to, shuttle vehicles and people movers, shall comply with applicable requirements of the Department of Transportation's ADA rule.

(e) The Americans with Disabilities Act Accessibility Guidelines (ADAAGs), including section 10.4 concerning airport facilities, shall be the standard for accessibility under this section.

(f) Contracts or leases between carriers and airport operators concerning the use of airport facilities shall set forth the respective responsibilities of the parties for the provision of accessible facilities and services to individuals with disabilities as required by this part for carriers and applicable section 504 and ADA rules of the Department of Transportation and Department of Justice for airport operators.

[Amdt. 6, 61 FR 56422, Nov. 1, 1996]

§§ 382.25–382.29 [Reserved]

Subpart C—Requirements for Services

§ 382.31 Refusal of transportation.

(a) Unless specifically permitted by a provision of this part, a carrier shall

not refuse to provide transportation to a qualified individual with a disability on the basis of his or her disability.

(b) A carrier shall not refuse to provide transportation to a qualified individual with a disability solely because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers.

(c) A carrier shall not refuse to provide transportation to qualified individuals with a disability by limiting the number of such persons who are permitted to travel on a given flight.

(d) Carrier personnel, as authorized by 49 U.S.C. 1511, 14 CFR 91.8, or 14 CFR 121.533, may refuse to provide transportation to any passenger on the basis of safety, and may refuse to provide transportation to any passenger whose carriage would violate the Federal Aviation Regulations. In exercising this authority, carrier personnel shall not discriminate against any qualified individual with a disability on the basis of disability and their actions shall not be inconsistent with the provisions of this part. In the event that such action is inconsistent with the provisions of this part, the carrier shall be subject to remedies provided under § 382.65.

(e) When a carrier refuses to provide transportation to any person on a basis relating to the individual's disability, the carrier shall specify in writing to the person the basis for the refusal, including, where applicable, the reasonable and specific basis for the carrier's opinion that transporting the person would or might be inimical to the safety of the flight. This written explanation shall be provided within 10 calendar days of the refusal of transportation.

§ 382.33 Advance notice requirements.

(a) Except as provided in paragraph (b) of this section, a carrier shall not require a qualified individual with a disability to provide advance notice of his or her intention to travel or of his or her disability as a condition of receiving transportation or of receiving services or accommodations required by this part.

(b) A carrier may require up to 48 hours advance notice and one-hour advance check-in concerning a qualified individual with a disability who wishes to receive any of the following services, types of equipment, or accommodations:

(1) Medical oxygen for use on board the aircraft, if this service is available on the flight;

(2) Carriage of an incubator, if this service is available on the flight;

(3) Hook-up for a respirator to the aircraft electrical power supply, if this service is available on the flight;

(4) Accommodation for a passenger who must travel in a stretcher, if this service is available on the flight;

(5) Transportation for an electric wheelchair on a flight scheduled to be made with an aircraft with fewer than 60 seats;

(6) Provision by the carrier of hazardous materials packaging for a battery for a wheelchair or other assistive device;

(7) Accommodation for a group of ten or more qualified individuals with a disability, who make reservations and travel as a group; and

(8) Provision of an on-board wheelchair on an aircraft that does not have an accessible lavatory.

(c) If a passenger does not meet advance notice or check-in requirements established by a carrier consistent with this section, the carrier shall nonetheless provide the service, equipment, or accommodation if it can do so by making a reasonable effort, without delaying the flight.

(d) Carriers' reservation and other administrative systems shall ensure that when advance notice is provided by qualified individuals with a disability as provided by this section, the notice is recorded and properly transmitted to operating employees responsible for providing the accommodation concerning which notice was provided.

(e) If the qualified individual with a disability provides the notice required by the carrier for a service under paragraph (b) of this section, the carrier shall ensure that the requested service is provided.

(f) If a qualified individual with a disability provides advance notice to a carrier, and the individual is forced to

change to the flight of a different carrier because of the cancellation of the original flight or the substitution of inaccessible equipment, the first carrier shall, to the maximum extent feasible, provide assistance to the second carrier in providing the accommodation requested by the individual from the first carrier.

§ 382.35 Attendants.

(a) Except as provided in this section, a carrier shall not require that a qualified individual with a disability travel with an attendant as a condition of being provided air transportation. A concern on the part of carrier personnel that a individual with a disability may need to use inaccessible lavatory facilities or may otherwise need extensive special assistance for personal needs which carrier personnel are not obligated to provide is not a basis on which the carrier may require an attendant.

(b) A carrier may require that a qualified individual with a disability meeting any of the following criteria travel with an attendant as a condition of being provided air transportation, if the carrier determines that an attendant is essential for safety:

(1) A person traveling in a stretcher or incubator. The attendant for such a person must be capable of attending to the passenger's in-flight medical needs;

(2) A person who, because of a mental disability, is unable to comprehend or respond appropriately to safety instructions from carrier personnel, including the safety briefing required by 14 CFR 121.571(a)(3) and (a)(4) or 14 CFR 135.117(b);

(3) A person with a mobility impairment so severe that the person is unable to assist in his or her own evacuation of the aircraft;

(4) A person who has both severe hearing and severe vision impairments, if the person cannot establish some means of communication with carrier personnel, adequate to permit transmission of the safety briefing required by 14 CFR 121.571(a)(3) and (a)(4) or 14 CFR 135.117(b).

(c) If the carrier determines that a person meeting the criteria of paragraph (b)(2), (b)(3) or (b)(4) of this section must travel with an attendant,

§ 382.37

14 CFR Ch. II (1–1–01 Edition)

contrary to the individual's self-assessment that he or she is capable of traveling independently, the carrier shall not charge for the transportation of the attendant.

(d) If, because there is not a seat available on a flight for an attendant whom the carrier has determined to be necessary, a handicapped person with a confirmed reservation is unable to travel on the flight, the handicapped person shall be eligible for denied boarding compensation under 14 CFR part 250.

(e) For purposes of determining whether a seat is available for an attendant, the attendant shall be deemed to have checked in at the same time as the handicapped person.

§ 382.37 Seat assignments.

(a) Carriers shall not exclude any qualified individual with a disability from any seat in an exit row or other location or require that a qualified individual with a disability sit in any particular seat, on the basis of disability, except in order to comply with the requirements of an FAA safety regulation or as provided in this section.

(b) If a person's disability results in involuntary active behavior that would result in the person properly being refused transportation under § 382.31, and the safety problem could be mitigated to a degree that would permit the person to be transported consistent with safety if the person is seated in a particular location, the carrier shall offer the person that particular seat location as an alternative to being refused transportation.

(c) If a service animal cannot be accommodated at the seat location of the qualified individual with a disability whom the animal is accompanying (see § 382.55(a)(2)), the carrier shall offer the passenger the opportunity to move with the animal to a seat location, if present on the aircraft, where the animal can be accommodated, as an alternative to requiring that the animal travel with checked baggage.

§ 382.38 Seating accommodations.

(a) On request of an individual who self-identifies to a carrier as having a disability specified in this paragraph, the carrier shall provide the following

seating accommodations, subject to the provisions of this section:

(1) For a passenger who uses an aisle chair to access the aircraft and who cannot readily transfer over a fixed aisle armrest, the carrier shall provide a seat in a row with a movable aisle armrest.

(2) The carrier shall provide a seat next to a passenger traveling with a disability for a person assisting the individual in the following circumstances:

(i) When an individual with a disability is traveling with a personal care attendant who will be performing a function for the individual during the flight that airline personnel are not required to perform (e.g., assistance with eating);

(ii) When an individual with a vision impairment is traveling with a reader/assistant who will be performing functions for the individual during the flight; or

(iii) When an individual with a hearing impairment is traveling with an interpreter who will be performing functions for the individual during the flight.

(3) For an individual traveling with a service animal, the carrier shall provide, as the individual requests, either a bulkhead seat or a seat other than a bulkhead seat.

(4) For a person with a fused or immobilized leg, the carrier shall provide a bulkhead seat or other seat that provides greater legroom than other seats, on the side of an aisle that better accommodates the individual's disability.

(b) A carrier that provides advance seat assignments shall comply with the requirements of paragraph (a) of this section by any of the following methods:

(1) The carrier may "block" an adequate number of the seats used to provide the seating accommodations required by this section.

(i) The carrier shall not assign these seats to passengers not needing seating accommodations provided under this paragraph until 24 hours before the scheduled departure of the flight.

(ii) At any time up until 24 hours before the scheduled departure of the flight, the carrier shall assign a seat

meeting the requirements of this section to an individual who requests it.

(iii) If an individual with a disability does not make a request at least 24 hours before the scheduled departure of the flight, the carrier shall meet the individual's request to the extent practicable, but is not required to reassign a seat assigned to another passenger in order to do so.

(2) The carrier may designate an adequate number of the seats used to provide seating accommodations required by this section as "priority seats" for individuals with disabilities.

(i) The carrier shall provide notice that all passengers assigned these seats (other than passengers with disabilities listed in paragraph (a) of this section) are subject to being reassigned to another seat if necessary to provide a seating accommodation required by this section. The carrier may provide this notice through its computer reservation system, verbal information provided by reservation personnel, ticket notices, gate announcements, counter signs, seat cards or notices, frequent-flier literature, or other appropriate means.

(ii) The carrier shall assign a seat meeting the requirements of this section to an individual who requests the accommodation and checks in at least one hour before the scheduled departure of the flight. If all designated priority seats that would accommodate the individual have been assigned to other passengers, the carrier shall reassign the seats of the other passengers as needed to provide the requested accommodation.

(iii) If the individual with a disability does not check in at least an hour before the scheduled departure of the flight, the carrier shall meet the individual's request to the extent practicable, but is not required to reassign a seat assigned to another passenger in order to do so.

(c) On request of an individual who self-identifies to a carrier as having a disability other than one in the four categories listed in paragraph (a) of this section and as needing a seat assignment accommodation in order to readily access and use the carrier's air transportation services, a carrier that assigns seats in advance shall provide

such an accommodation, as described in this paragraph.

(1) A carrier that complies with paragraph (a) this section through the "seat-blocking" mechanism of paragraph (b)(1) of this section shall implement the requirements of this paragraph as follows:

(i) When the passenger with a disability not described in paragraph (a) of this section makes a reservation more than 24 hours before the scheduled departure time of the flight, the carrier is not required to offer the passenger one of the seats blocked for the use of passengers with disabilities listed under paragraph (a) of this section.

(ii) However, the carrier shall assign to the passenger any seat, not already assigned to another passenger, that accommodates the passenger's needs, even if that seat is not available for assignment to the general passenger population at the time of the request.

(2) A carrier that complies with this section through the "designated priority seats" mechanism of paragraph (b)(2) of this section shall implement the requirements of this paragraph as follows:

(i) When a passenger with a disability not described in paragraph (a) of this section makes a reservation, the carrier shall assign to the passenger any seat, not already assigned to another passenger, that accommodates the passenger's needs, even if that seat is not available for assignment to the general passenger population at the time of the request.

(ii) If such a passenger is assigned to a designated priority seat, he or she is subject to being reassigned to another seat as provided in paragraph (b)(2) of this section.

(d) A carrier that does not provide advance seat assignments shall provide seating accommodations for persons described in paragraphs (a) and (c) of this section by allowing them to board the aircraft before other passengers, including other "pre-boarded" passengers, so that the individuals needing seating accommodations can select seats that best meet their needs if they have taken advantage of the opportunity to pre-board.

(e) A carrier may comply with the requirements of this section through an

alternative method not specified in paragraphs (b) through (d) of this section. A carrier wishing to do so shall obtain the written concurrence of the Department of Transportation (Office of the Secretary) before implementing the alternative method.

(f) The carrier shall assign a seat providing an accommodation requested by an individual with a disability, as specified in this section, even if the seat is not otherwise available for assignment to the general passenger population at the time of the individual's request.

(g) If the carrier has already provided a seat to an individual with a disability to furnish an accommodation required by paragraph (a) or (c) of this section, the carrier shall not reassign that individual to another seat in response to a subsequent request from another individual with a disability, without the first individual's consent.

(h) In no case shall any individual be denied transportation on a flight in order to provide accommodations required by this section.

(i) Carriers are not required to furnish more than one seat per ticket or to provide a seat in a class of service other than the one the passenger has purchased.

(j) In responding to requests from individuals for accommodations required by this section, carriers shall comply with FAA safety rules, including those pertaining to exit seating (see 14 CFR 121.585 and 135.129).

(k) Carriers are required to comply with this section beginning September 30, 1998.

[Doc. No. OST-96-1880, 63 FR 10535, Mar. 4, 1998; 63 FR 11954, Mar. 11, 1998]

§ 382.39 Provision of services and equipment.

Carriers shall ensure that qualified individuals with a disability are provided the following services and equipment:

(a) Carriers shall provide assistance requested by or on behalf of qualified individuals with a disability, or offered by air carrier personnel and accepted by qualified individuals with a disability, in enplaning and deplaning. The delivering carrier shall be responsible for assistance in making flight

connections and transportation between gates.

(1) This assistance shall include, as needed, the services personnel and the use of ground wheelchairs, boarding wheelchairs, on-board wheelchairs where provided in accordance with this part, and ramps or mechanical lifts.

(2) Boarding shall be by level entry boarding platforms or accessible passenger lounges, where these means are available. Where these means are not available, carriers shall use ramps, mechanical lifts, or other suitable devices (not normally used for freight) for enplaning and deplaning qualified individuals with a disability who need them. Such devices shall be maintained in proper working order. In no case shall carrier personnel be required to hand-carry a passenger in order to provide boarding assistance (i.e., directly to pick up the passenger's body in the arms of one or more carrier personnel to effect a level change the passenger needs to enter or leave the aircraft). Requirements for providing boarding assistance to aircraft with 30 or fewer seats are found in § 382.40.

(3) Carriers shall not leave a handicapped passenger unattended in a ground wheelchair, boarding wheelchair, or other device, in which the passenger is not independently mobile, for more than 30 minutes.

(b) Carriers shall provide services within the aircraft cabin as requested by or on behalf of individuals with a disability, or when offered by air carrier personnel and accepted by individuals with a disability as follows:

(1) Assistance in moving to and from seats, as part of the enplaning and deplaning processes;

(2) Assistance in preparation for eating, such as opening packages and identifying food;

(3) If there is an on-board wheelchair on the aircraft, assistance with the use of the on-board wheelchair to enable the person to move to and from a lavatory;

(4) Assistance to a semiambulatory person in moving to and from the lavatory, not involving lifting or carrying the person; or

(5) Assistance in loading and retrieving carry-on items, including mobility

aids and other assistive devices stowed on board in accordance with § 382.41.

(c) Carriers are not required to provide extensive special assistance to qualified individuals with a disability. For purposes of this section, extensive special assistance includes the following activities:

- (1) Assistance in actual eating;
- (2) Assistance within the restroom or assistance at the passenger's seat with elimination functions;
- (3) Provision of medical services.

[55 FR 8046, Mar. 6, 1990, as amended by Amdt. 6, 61 FR 56422, 56423, Nov. 1, 1996; 62 FR 17, Jan. 2, 1997]

§ 382.40 Boarding assistance for small aircraft.

(a) Paragraphs (b) and (c) of this section apply to air carriers conducting passenger operations with aircraft having 19–30 seat capacity at airports with 10,000 or more annual enplanements.

(b) Carriers shall, in cooperation with the airports they serve, provide boarding assistance to individuals with disabilities using mechanical lifts, ramps, or other suitable devices that do not require employees to lift or carry passengers up stairs.

(c)(1) Each carrier shall negotiate in good faith with the airport operator at each airport concerning the acquisition and use of boarding assistance devices. The carrier(s) and the airport operator shall, by no later than September 2, 1997, sign a written agreement allocating responsibility for meeting the boarding assistance requirements of this section between or among the parties. The agreement shall be made available, on request, to representatives of the Department of Transportation.

(2) The agreement shall provide that all actions necessary to ensure accessible boarding for passengers with disabilities are completed as soon as practicable, but no later than December 2, 1998 at large and medium commercial service hub airports (those with 1,200,000 or more annual enplanements); December 2, 1999 for small commercial service hub airports (those with between 250,000 and 1,199,999 annual enplanements); or December 4, 2000 for non-hub commercial service primary airports (those with between 10,000 and

249,999 annual enplanements). All air carriers and airport operators involved are jointly responsible for the timely and complete implementation of the agreement.

(3) Under the agreement, carriers may require that passengers wishing to receive boarding assistance requiring the use of a lift for a flight using a 19–30 seat aircraft check in for the flight one hour before the scheduled departure time for the flight. If the passenger checks in after this time, the carrier shall nonetheless provide the boarding assistance by lift if it can do so by making a reasonable effort, without delaying the flight.

(4) Boarding assistance under the agreement is not required in the following situations:

- (i) Access to aircraft with a capacity of fewer than 19 or more than 30 seats;
- (ii) Access to float planes;
- (iii) Access to the following 19-seat capacity aircraft models: the Fairchild Metro, the Jetstream 31, and the Beech 1900 (C and D models);

(iv) Access to any other 19-seat aircraft model determined by the Department of Transportation to be unsuitable for boarding assistance by lift on the basis of a significant risk of serious damage to the aircraft or the presence of internal barriers that preclude passengers who use a boarding or aisle chair to reach a non-exit row seat.

(5) When boarding assistance is not required to be provided under paragraph (c)(4) of this section, or cannot be provided as required by paragraphs (b) and (c) of this section for reasons beyond the control of the parties to the agreement (e.g., because of mechanical problems with a lift), boarding assistance shall be provided by any available means to which the passenger consents, except hand-carrying as defined in § 382.39(a)(2) of this part.

(6) The agreement shall ensure that all lifts and other accessibility equipment are maintained in proper working condition.

(d)(1) The training of carrier personnel required by § 382.61 shall include, for those personnel involved in providing boarding assistance, training to proficiency in the use of the boarding

§ 382.41

14 CFR Ch. II (1–1–01 Edition)

assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

(2) Carriers who do not operate aircraft with more than a 19-seat capacity shall ensure that those personnel involved in providing boarding assistance are trained to proficiency in the use of the boarding assistance equipment used by the carrier and appropriate boarding assistance procedures that safeguard the safety and dignity of passengers.

[Amtd. 6, 61 FR 56423, Nov. 1, 1996]

§ 382.41 Stowage of personal equipment.

(a) All stowage of qualified handicapped individuals' wheelchairs and other equipment covered by this part in aircraft cabins shall be in accordance with 14 CFR 121.589 and 14 CFR 121.285(c) or 14 CFR 135.87, as applicable.

(b) Carriers shall permit qualified individuals with a disability using personal ventilators/respirators to bring their equipment, including non-spillable batteries that meet the requirements of 49 CFR 173.159(d) and any applicable FAA safety regulations, on board the aircraft and use it.

(c) Carriers shall permit qualified individuals with a disability to stow canes and other assistive devices on board the aircraft in close proximity to their seats, consistent with the requirements of FAA safety regulations for carry-on items.

(d) Carriers shall not, in implementing their carry-on baggage policies, count toward a limit on carry-on items any assistive device brought into the cabin by a qualified individual with a disability.

(e) Carriers shall provide for on-board stowage of passengers' wheelchairs (including collapsible or break-down battery-powered wheelchairs, subject to the provisions of paragraph (g)(5) of this section) as carry-on baggage as follows:

(1) Carriers shall permit the stowage of wheelchairs or components of wheelchairs in overhead compartments and under seats, consistent with the requirements of FAA safety regulations for carry-on items.

(2) In an aircraft in which a closet or other approved stowage area is provided in the cabin for passengers' carry-on items, of a size that will accommodate a folding, collapsible, or break-down wheelchair, the carrier shall designate priority stowage space, as described below, for at least one folding, collapsible, or break-down wheelchair in that area. A individual with a disability who takes advantage of a carrier offer of the opportunity to pre-board the aircraft may stow his or her wheelchair in this area, with priority over the carry-on items brought onto the aircraft by other passengers enplaning at the same airport. A individual with a disability who does not take advantage of a carrier offer of the opportunity to preboard may use the area to stow his or her wheelchair on a first-come, first-served basis along with all other passengers seeking to stow carry-on items in the area.

(3) If an approved stowage area in the cabin is not available for a folding, collapsible, or break-down wheelchair, the wheelchair shall be stowed in the cargo compartment.

(f) When a folding, collapsible, or break-down wheelchair cannot be stowed in the passenger cabin as carry-on baggage, carriers shall provide for the checking and timely return of passengers' wheelchairs and other assistive devices as close as possible to the door of the aircraft, so that passengers may use their own equipment to the extent possible, except where this practice would be inconsistent with DOT regulations governing the transportation of hazardous materials.

(1) At the request of the passenger, the carrier may return wheelchairs or other assistive devices to the passenger at the baggage claim area instead of at the door of the aircraft.

(2) In order to achieve the timely return of wheelchairs, passengers' wheelchairs and other assistive devices shall be among the first items retrieved from the baggage compartment.

(3) Wheelchairs and other assistive devices shall be stowed in the baggage compartment with priority over other cargo and baggage. Where this priority results in passengers' baggage being unable to be carried on the flight, the carrier shall make its best efforts to

ensure that the other baggage reaches the passengers' destination within four hours of the scheduled arrival time of the flight.

(g) Whenever baggage compartment size and aircraft airworthiness considerations do not prohibit doing so, carriers shall accept a passenger's battery-powered wheelchair, including the battery, as checked baggage, consistent with the requirements of 49 CFR 175.10(a)(19) and (20) and the provisions of paragraph (f) of this section.

(1) Carriers may require that qualified individuals with a disability wishing to have battery-powered wheelchairs transported on a flight (including in the cabin) check in one hour before the scheduled departure time of the flight. If such an individual checks in after this time, the carrier shall nonetheless carry the wheelchair if it can do so by making a reasonable effort, without delaying the flight.

(2) If the battery on the individual's wheelchair has been labeled by the manufacturer as non-spillable as provided in 49 CFR 173.159(d)(2), or if a battery-powered wheelchair with a spillable battery is loaded, stored, secured and unloaded in an upright position, the carrier shall not require the battery to be removed and separately packaged. Notwithstanding this requirement, carriers may remove and package separately any battery that appears to be damaged or leaking.

(3) When it is necessary to detach the battery from the wheelchair, carriers shall, upon request, provide packaging for the battery meeting the requirements of 49 CFR 175.10(a)(19) and (20) and package the battery. Carriers may refuse to use packaging materials or devices other than those they normally use for this purpose.

(4) Carriers shall not drain batteries.

(5) At the request of a passenger, a carrier shall stow a folding, breakdown or collapsible battery-powered wheelchair in the passenger cabin stowage area as provided in paragraph (e) of this section. If the wheelchair can be stowed in the cabin without removing the battery, the carrier shall not remove the battery. If the wheelchair cannot be stowed in the cabin without removing the battery, the carrier shall remove the battery and stow

it in the baggage compartment as provided in paragraph (g)(3) of this section. In this case, the carrier shall permit the wheelchair, with battery removed, to be stowed in the cabin.

(h) Individuals with disabilities shall be permitted to provide written directions concerning the disassembly and reassembly of their wheelchairs.

[55 FR 8046, Mar. 6, 1990, as amended by Doc. No. OST -96-1880, 63 FR 10536, Mar. 4, 1998]

§ 382.43 Treatment of mobility aids and assistive devices.

(a) When wheelchairs or other assistive devices are disassembled by the carrier for stowage, the carrier shall reassemble them and ensure their prompt return to the handicapped passenger. Wheelchairs and other assistive devices shall be returned to the passenger in the condition received by the carrier.

(b) With respect to domestic transportation, the baggage liability limits of 14 CFR part 254 do not apply to liability for loss, damage, or delay concerning wheelchairs or other assistive devices. The criterion for calculating the compensation for a lost, damaged, or destroyed wheelchair or other assistive device shall be the original purchase price of the device.

(c) Carriers shall not require qualified individuals with a disability to sign waivers of liability for damage to or loss of wheelchairs or other assistive devices.

[55 FR 8046, Mar. 6, 1990, as amended at 55 FR 12342, Apr. 3, 1990; 64 FR 41783, Aug. 2, 1999]

§ 382.45 Passenger information.

(a) A carrier shall make available, on request, the following information concerning facilities and services related to the provision of air transportation to qualified individuals with a disability. This information shall pertain to the type of aircraft and, where feasible, the specific aircraft scheduled for a specific flight:

(1) The location of seats, if any, with movable armrests and any seats which the carrier, consistent with this part, does not make available to qualified individuals with a disability;

(2) Any limitations on the ability of the aircraft to accommodate qualified

§ 382.47

14 CFR Ch. II (1–1–01 Edition)

individuals with disabilities, including limitations on the availability of boarding assistance to the aircraft, with respect to the departure and destination points and any intermediate stops. The carrier shall provide this information to any passenger who states that he or she uses a wheelchair for boarding, even if the passenger does not explicitly request the information.

(3) Any limitations on the availability of storage facilities, in the cabin or in the cargo bay, for mobility aids or other equipment commonly used by handicapped persons;

(4) Whether the aircraft has an accessible lavatory.

(b) The following provisions govern the provision of individual safety briefings to qualified individuals with a disability:

(1) Individual safety briefings shall be conducted for any passenger where required by 14 CFR 121.571 (a)(3) and (a)(4) or 14 CFR 135.117(b);

(2) Carrier personnel may offer an individual briefing to any other passenger;

(3) Individual safety briefings for qualified individuals with a disability shall be conducted as inconspicuously and discreetly as possible;

(4) Carrier personnel shall not require any qualified individual with a disability to demonstrate that he or she has listened to, read, or understood the information presented, except to the extent that carrier personnel impose such a requirement on all passengers with respect to the general safety briefing, and shall not take any action adverse to a qualified individual with a disability on the basis that the person has not “accepted” the briefing.

(c) Each carrier shall ensure that qualified individuals with a disability, including those with vision or hearing impairments, have timely access to information the carrier provides to other passengers in the terminal or on the aircraft (to the extent that it does not interfere with crewmembers’ safety duties as set forth in FAA regulations) including, but not limited to, information concerning ticketing, flight delays, schedule changes, connections, flight check-in, gate assignments, and the checking and claiming of luggage; *Provided*, That persons who are unable

to obtain such information from the audio or visual systems used by carriers in airports or on aircraft shall request the information from carrier personnel. Carriers shall also provide information on aircraft changes that will affect the travel of handicapped persons.

(d) Carriers shall have, at each airport they use, a copy of this part and shall make it available for review by handicapped persons on request.

[55 FR 8046, Mar. 6, 1990, as amended by Amdt. 6, 61 FR 56423, Nov. 1, 1996]

§ 382.47 Accommodations for persons with hearing impairments.

(a) Each carrier providing scheduled air service, or charter service under section 401 of the Federal Aviation Act, and which makes available telephone reservation and information service available to the public shall make available a telecommunications device for the deaf (TDD) service to enable persons with hearing impairments to make reservations and obtain information. The TDD service shall be available during the same hours as the telephone service for the general public and the response time for answering calls shall be equivalent. Users of the TDD service shall not be subject to charges for a call that exceed those applicable to other users of the telephone information and reservation service.

(b) In aircraft in which safety briefings are presented to passengers on video screens, the carrier shall ensure that the video presentation is accessible to persons with hearing impairments.

(1) Except as provided in paragraph (b)(2) of this section, the carrier shall implement this requirement by using open captioning or an inset for a sign language interpreter as part of the video presentation.

(2) A carrier may use an equivalent non-video alternative to this requirement only if neither open captioning nor a sign language interpreter inset could be placed in the video presentation without so interfering with it as to render it ineffective or would be large enough to be readable.

(3) Carriers shall implement the requirements of this section by substituting captioned video materials for

uncaptioned video materials as the uncaptioned materials are replaced in the normal course of the carrier's operations.

§ 382.49 Security screening of passengers.

(a) Qualified individuals with a disability shall undergo security screening in the same manner, and be subject to the same security requirements, as other passengers. Possession by a qualified individual with a disability of an aid used for independent travel shall not subject the person or the aid to special screening procedures if the person using the aid clears the security system without activating it. *Provided*, That this paragraph shall not prohibit security personnel from examining a mobility aid or assistive device which, in their judgment, may conceal a weapon or other prohibited item. Security searches of qualified individuals with a disability whose aids activate the security system shall be conducted in the same manner as for other passengers. Private security screenings shall not be required for qualified individuals with a disability to a greater extent, or for any different reason, than for other passengers.

(b) Except as provided in paragraph

(c) of this section, if a qualified handicapped person requests a private screening in a timely manner, the carrier shall provide it in time for the passenger to enplane.

(c) If a carrier employs technology that can conduct an appropriate screening of a handicapped passenger without necessitating a physical search of the person, the carrier is not required to provide a private screening.

§ 382.51 Communicable diseases.

(a) Except as provided in paragraph (b) of this section, a carrier shall not take any of the following actions, with respect to a person who is otherwise a qualified individual with a disability, on the basis that the individual has a communicable disease or infection:

(1) Refuse to provide transportation to the person;

(2) Require the person to provide a medical certificate; or

(3) Impose on the person any condition, restriction, or requirement not imposed on other passengers.

(b)(1) The carrier may take the actions listed in paragraph (a) of this section with respect to an individual who has a communicable disease or infection only if the individual's condition poses a direct threat to the health or safety of others.

(2) For purposes of this section, a direct threat means a significant risk to the health or safety of others that cannot be eliminated by a modification of policies, practices, or procedures, or by the provision of auxiliary aids or services.

(3) In determining whether an individual poses a direct threat to the health or safety of others, a carrier must make an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence, to ascertain: the nature, duration, and severity of the risk; that the potential harm to the health and safety of others will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk.

(4) In taking actions authorized under this paragraph, carriers shall select the alternative, consistent with the safety and health of other persons, that is least restrictive from the point of view of the passenger with the communicable disease. For example, the carrier shall not refuse to provide transportation to an individual if provision of a medical certificate or reasonable modifications to practices, policies, or procedures will mitigate the risk of communication of the disease to others to an extent that would permit the individual to travel.

(5) If an action authorized under this paragraph results in the postponement of a passenger's travel, the carrier shall permit the passenger to travel at a later time (up to 90 days from the date of the postponed travel) at the fare that would have applied to the passenger's originally scheduled trip without penalty or, at the passenger's discretion, provide a refund for any unused flights, including return flights.

(6) Upon the passenger's request, the carrier shall provide to the passenger a

§ 382.53

written explanation of any action taken under this paragraph within 10 days of the request.

(c) If a qualified individual with a disability with a communicable disease or infection of the kind described in paragraph (b) of this section presents a medical certificate to the carrier, as provided in § 382.53(c)(2), the carrier shall provide transportation to the individual, unless it is not feasible for the carrier to implement the conditions set forth in the medical certificate as necessary to prevent the transmission of the disease or infection to other persons in the normal course of a flight.

[55 FR 8046, Mar. 6, 1990, as amended by Amdt. 6, 61 FR 56423, Nov. 1, 1996]

§ 382.53 Medical certificates.

(a) Except as provided in this section, a carrier shall not require a person who is otherwise a qualified handicapped person to have a medical certificate as a condition for being provided transportation.

(b)(1) A carrier may require a medical certificate for a qualified individual with a disability—

(i) Who is traveling in a stretcher or incubator;

(ii) Who needs medical oxygen during a flight, as provided in 14 CFR 121.574; or

(iii) Whose medical condition is such that there is reasonable doubt that the individual can complete the flight safely, without requiring extraordinary medical assistance during the flight.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the passenger is capable of completing a flight safely, without requiring extraordinary medical assistance during the flight.

(c)(1) If a qualified individual with a disability has a communicable disease or infection of the kind described in § 382.51(b), a carrier may require a medical certificate.

(2) For purposes of this paragraph, a medical certificate is a written statement from the passenger's physician saying that the disease or infection would not, under the present conditions, be communicable to other persons

14 CFR Ch. II (1–1–01 Edition)

during the normal course of a flight. The medical certificate shall state any conditions or precautions that would have to be observed to prevent the transmission of the disease or infection to other persons in the normal course of a flight. It shall be dated within ten days of the date of the flight for which it is presented.

§ 382.55 Miscellaneous provisions.

(a) Carriers shall permit dogs and other service animals used by handicapped persons to accompany the persons on a flight.

(1) Carriers shall accept as evidence that an animal is a service animal identification cards, other written documentation, presence of harnesses or markings on harnesses, tags, or the credible verbal assurances of the qualified individual with a disability using the animal.

(2) Carriers shall permit a service animal to accompany a qualified individual with a disability in any seat in which the person sits, unless the animal obstructs an aisle or other area that must remain unobstructed in order to facilitate an emergency evacuation.

(3) In the event that special information concerning the transportation of animals outside the continental United States is either required to be or is provided by the carrier, the information shall be provided to all passengers traveling with animals outside the continental United States with the carrier, including those traveling with service animals.

(b) Carriers shall not require qualified individuals with a disability to sit on blankets.

(c) Carriers shall not restrict the movements of handicapped persons in terminals or require them to remain in a holding area or other location in order to be provided transportation, to receive assistance, or for other purposes, or otherwise mandate separate treatment for handicapped persons, except as permitted or required in this part.

§ 382.57 Charges for accommodations prohibited.

Carriers shall not impose charges for providing facilities, equipment, or

Office of the Secretary, DOT

§ 382.63

services that are required by this part to be provided to qualified individuals with a disability.

§ 382.59 [Reserved]

Subpart D—Administrative Provisions

§ 382.61 Training.

(a) Each carrier which operates aircraft with more than 19 passenger seats shall provide training, meeting the requirements of this paragraph, for all its personnel who deal with the traveling public, as appropriate to the duties of each employee.

(1) The carrier shall ensure training to proficiency concerning:

(i) The requirements of this part and other DOT or FAA regulations affecting the provision of air travel to handicapped persons; and

(ii) The carrier's procedures, consistent with this part, concerning the provision of air travel to handicapped persons, including the proper and safe operation of any equipment used to accommodate handicapped passengers.

(2) The carrier shall also train such employees with respect to awareness and appropriate responses to handicapped persons, including persons with physical, sensory, mental, and emotional disabilities, including how to distinguish among the differing abilities of individuals with a disability.

(3) The carrier shall consult with organizations representing persons with disabilities in developing its training program and the policies and procedures concerning which carrier personnel are trained.

(4) The carrier shall ensure that personnel required to receive training shall complete the training by the following times:

(i) For crewmembers subject to training required under 14 CFR part 121 or 135, who are employed on the date the carrier's program is established under § 382.63, as part of their next scheduled recurrent training;

(ii) For other personnel employed on the date the carrier's program is established under § 382.63, within 180 days of that date;

(iii) For crewmembers subject to training requirements under 14 CFR

part 121 or 135 whose employment in any given position commences after the date the carrier's program is established under § 382.63, before they assume their duties; and

(iv) For other personnel whose employment in any given position commences after the date the carrier's program is established under § 382.63, within 60 days of the date on which they assume their duties.

(5) Each carrier shall ensure that all personnel required to receive training receive refresher training on the matters covered by this section, as appropriate to the duties of each employee, as needed to maintain proficiency.

(6) Each carrier shall provide, or require its contractors to provide, training to the contractors' employees concerning travel by handicapped persons. This training is required only for those contractor employees who deal directly with the traveling public at airports, and it shall be tailored to the employees' functions. Training for contractor employees shall meet the requirements of paragraphs (a)(1) through (a)(5) of this section.

(7) Current employees of each carrier designated as complaints resolution officials, for purposes of § 382.65 of this part, shall receive training concerning the requirements of this part and the duties of a complaints resolution official within 60 days of the effective date of this part. Employees subsequently designated as complaints resolution officers shall receive this training before assuming their duties under § 382.65. All employees performing the complaints resolution official function shall receive annual refresher training concerning their duties and the provisions of this regulation.

(b) Each carrier operating only aircraft with 19 or fewer passenger seats shall provide training for flight crewmembers and appropriate personnel to ensure that they are familiar with the matters listed in paragraphs (a)(1) and (a)(2) of this section and comply with the requirements of this part.

§ 382.63 Carrier programs.

(a)(1) Each carrier that operates aircraft with more than 19 passenger seats shall establish and implement, within 180 days of the effective date of this

§ 382.65

14 CFR Ch. II (1–1–01 Edition)

part, a written program for carrying out the requirements of this part.

(2) Carriers are not excused from compliance with the provisions of this part during the 180 days before carrier programs are required to be established.

(b) The program shall include the following elements:

(1) The carrier's schedule for training its personnel in compliance with § 382.61:

(2) The carrier's policies and procedures for accommodating handicapped passengers consistent with the requirements of this part.

(c)(1) Major and National carriers (as defined in the DOT publication *Air Carrier Traffic Statistics*), and every U.S. carrier that shares the designator code of a Major or National carrier (as described in 14 CFR 399.88), shall submit their program to the Department for review within 180 days of the effective date of this part.

(2) The Department shall review each carrier's program, which the carrier shall implement without further DOT action at the time it is submitted to the Department.

(3) If the Department determines that any portion of a carrier's plan must be amended, or provisions added or deleted, in order for the carrier to comply with this part, DOT will direct the carrier to make appropriate changes. The carrier shall incorporate these changes into its program and implement them.

(d) Other carriers shall maintain their programs on file, and shall make them available for review by the Department on the Department's request. If, upon such review, the Department determines that any portion of a carrier's plan must be amended, or provisions added or deleted, in order for the carrier to comply with this part, DOT will direct the carrier to make appropriate changes. The carrier shall incorporate these changes into its program and implement them.

§ 382.65 Compliance procedures.

(a) Each carrier providing scheduled service shall establish and implement a complaint resolution mechanism, including designating one or more complaints resolution official(s) (CRO) to

be available at each airport which the carrier serves.

(1) The carrier shall make a CRO available to any person who complains of alleged violations of this part during all times the carrier is operating at the airport.

(2) The carrier may make the CRO available via telephone, at no cost to the passenger, if the CRO is not present in person at the airport at the time of the complaint. If a telephone link to the CRO is used, TDD service shall be available so that persons with hearing impairments may readily communicate with the CRO.

(3) Each CRO shall be thoroughly familiar with the requirements of this part and the carrier's procedures with respect to handicapped passengers.

(4) Each CRO shall have the authority to make dispositive resolution of complaints on behalf of the carrier.

(5) When a complaint is made to a CRO, the CRO shall promptly take dispositive action as follows:

(i) If the complaint is made to a CRO before the action or proposed action of carrier personnel has resulted in a violation of a provision of this part, the CRO shall take or direct other carrier personnel to take action, as necessary, to ensure compliance with this part. *Provided*, That the CRO is not required to be given authority to countermand a decision of the pilot-in-command of an aircraft based on safety.

(ii) If an alleged violation of a provision of this part has already occurred, and the CRO agrees that a violation has occurred, the CRO shall provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the carrier proposes to take in response to the violation.

(iii) If the CRO determines that the carrier's action does not violate a provision of this part, the CRO shall provide to the complainant a written statement including a summary of the facts and the reasons, under this part, for the determination.

(iv) The statements required to be provided in paragraph (a)(5) of this section shall inform the complainant of his or her right to pursue DOT enforcement action under this section. This statement shall be provided in person

to the complainant at the airport if possible; otherwise, it shall be forwarded to the complainant within 10 calendar days of the complaint.

(b) Each carrier shall establish a procedure for resolving written complaints alleging violation of the provisions of this part.

(1) A carrier is not required to respond to a complaint postmarked more than 45 days after the date of the alleged violation.

(2) A written complaint shall state whether the complainant has contacted a CRO in the matter, the name of the CRO and the date of the contact, if available, and include any written response received from the CRO.

(3) The carrier shall make a dispositive written response to a written complaint alleging a violation of a provision of this part within 30 days of its receipt.

(i) If the carrier agrees that a violation has occurred, the carrier shall provide to the complainant a written statement setting forth a summary of the facts and what steps, if any, the carrier proposes to take in response to the violation.

(ii) If the carrier denies that a violation has occurred, the response shall include a summary of the facts and the carrier's reasons, under this part, for the determination.

(iii) The statements required to be provided in paragraph (b)(3) of this section shall inform the complainant of his or her right to pursue DOT enforcement action under this section.

(c) Any person believing that a carrier has violated any provision of this part may contact the following office for assistance: Department of Transportation, Office of Consumer Affairs, 400 7th Street, SW., Washington, DC 20590, (202) 366-2220.

(d) Any person believing that a carrier has violated any provision of this part may file a formal complaint under the applicable procedures of 14 CFR part 302.

PART 383—CIVIL PENALTIES

Sec.

383.1 Basis and purpose.

383.2 Amount of penalty.

AUTHORITY: Secs. 222, 706, 707(b), Pub. L. 106-181, 114 Stat. 61; Pub. L. 101-410, 104 Stat. 890, as amended by sec. 31001, Pub. L. 104-134, 110 Stat. 1321.

SOURCE: Docket No. OST 2000-8058, 65 FR 61090, Oct. 16, 2000, unless otherwise noted.

§ 383.1 Basis and purpose.

(a) *Basis.* This part implements the civil penalty provisions of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR 21, Pub. L. 106-181; 114 Stat. 61; April 5, 2000, sections 222, 706, 707(b)), and the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), as amended by the Debt Collection Improvement Act of 1996 (Pub. L. 104-134, section 31001). The Debt Collection Improvement Act requires each agency head to adjust by regulation each civil monetary penalty provided by law by the inflation adjustment described under section 5 of the Federal Civil Penalties Inflation Adjustment Act. We have applied these guidelines to the civil penalty amounts that were not affected by AIR 21 and, taking into account the inflation that has occurred since the most recent adjustment, have found that no further adjustment is warranted as of June 2000.

(b) *Purpose.* This part states the civil penalty amounts with respect to violations of 49 U.S.C. 40127, 41705 and 41712 and other civil penalties provided in 49 U.S.C. 46301 (a)(1) for violations covered by this chapter.

§ 383.2 Amount of penalty.

A person is liable to the United States Government for a civil penalty of not more than \$10,000 for each violation of 49 U.S.C. 41705 and a civil penalty of not more than \$2,500 for each violation of 49 U.S.C. 40127 or 41712. For other violations of this chapter within the scope of 49 U.S.C. 46301, the civil penalty amount is \$1,100.